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DIGEST
of
DECISIONS OF THE UMPIRE
in 1958
ON BENEFIT CLAIMS
under the
UNEMPLOYMENT INSURANCE ACT
(CUBs 1444 to 1609 inclusive)

FIRST OF TWO VOLUMES

VOLUME ONE

- Description and Use of Digest
- Part A—Legislative Index
- Part B—Subject Index
- Part C—Text of legislative provisions cited

VOLUME TWO

- Part D—Individual digested decisions

FOREWORD

This Digest is designed to meet the immediate need for a convenient reference to the decisions of the Umpire on claims for benefit under the Unemployment Insurance Act. These decisions (Canadian Umpire-Benefit: CUB) should be distinguished from the few decisions of the Umpire on the insurability of employment under the Act (Canadian Umpire-Coverage and Contributions: CUC which are not the concern of the present work.

The present release covers all benefit claims decisions rendered by the Umpire in 1958 and, where such decision directed a rehearing by the board of referees, any final decision thereon rendered up to the date of publication. It is also intended to issue supplements to this release covering all later decisions as soon as these become available, with a view to providing the most up-to-date service possible. As regards the content of the Digest, it is hoped that the persons using it will recommend from time to time whatever improvements such usage might suggest.

It should be noted in this regard that there is being prepared, for release in the next few months, a comprehensive Digest of all decisions rendered prior to 1958 which are still relevant to the current legislative provisions under which benefit rights are being adjudicated. At that time, that Digest and the present release with supplements will be integrated by means of cumulative indexes along the lines of those provided in the present release.

Users of the Digest are reminded that in examining these decisions for guidance on current claims for benefit, reference should be made to the actual text (provided in Part C) of the legislative provision cited in the decision as being the one in effect at the time of the occurrence of the incident which gave rise to the decision. In certain cases, such provision may differ, by reason of subsequent amendment, from the legislative provision involved in their particular case; accordingly due note should be taken of any such difference and of its effect on the relevancy of the particular decision as guidance in the current claim's adjudication.

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DESCRIPTION AND USE OF DIGEST

The Digest consists for the most part, of individual summaries or digests of decisions rendered by the Umpire on claims for benefit under the Unemployment Insurance Act and Regulations. In addition, to facilitate the ready location of appropriate references, the Digest also provides a Legislative Index and a Subject Index. Finally, the Digest contains the full text of every legislative provision cited in the digested decisions.

The digest of each decision sets forth the basic reasoning behind it, using the language of the actual text as much as possible. In addition, all the facts are stated which either had a bearing on the particular decision or which have been held to be material in earlier decisions involving the same principle, situation or adjudication aspect. Each headnote lists the various adjudication aspects and sub-aspects under which may be found by reference to the Subject Index, digests of other decisions on the same points or facts. The words, "Affirmed", "Reversed" or "Varied", appearing in brackets in a given case digest, after the date on which the decision was rendered, indicate with respect to the finding of the Board of Referees, the tenor of the Umpire's decision. The "Appeal" referred to in the footnote to each case digest always means the appeal to the Umpire, not that to the Board of Referees. The jurisprudence noted under that heading in a case digest refers only to cases cited by the Umpire, unless, in an exceptional case, a special note indicates otherwise.

The digests, being summaries, should not be considered a complete substitute for the actual full-length decisions themselves; these continue to be available for perusal at every local office of the Unemployment Insurance Commission. It should be noted that while translations are made available, the original decision will be in the same language as the case-summary unless an entry in brackets under the CUB number in a given case summary specifies the other official language.

The Legislative Index is designed to permit locating immediately by means of the numerical reference to a given Section of the Act or of the Regulations, every decision rendered in 1958 in which that Section was cited (in which case the actual text of the Section is provided in Part C). The first section of this Index lists the CUBs in order of number of the Sections of the Act; the second section lists in order of number of the Regulations. Unless otherwise indicated, the legislative provisions cited are those in force since 1955.

For those provisions which have been cited in a large number of decisions, it may be found preferable to refer to the Subject Index for a more detailed breakdown of the jurisprudence under that provision. For this reason there is provided in the Legislative Index, opposite the section number of the provision, a Subject heading and, where applicable, subheading. For example, "Regulation 158—Full working week (Subheading)—**UNEMPLOYED** (Main heading)"; by looking under "Full working week", in the portion of the Subject Index provided for "**UNEMPLOYED**", one will find the references to all the decisions in 1958 on "Full working week" within the meaning of Section 158 of the Regulations.

The Subject Index is a breakdown of the whole field of adjudication into ten main Subject headings or aspects each of which is broken down

further into detailed sub-headings under which specific references to the relevant CUBs may be found. Eight of the main headings, for example, **AVAILABILITY, LABOUR DISPUTE, UNEMPLOYED**, represent a major grounds of disqualification.

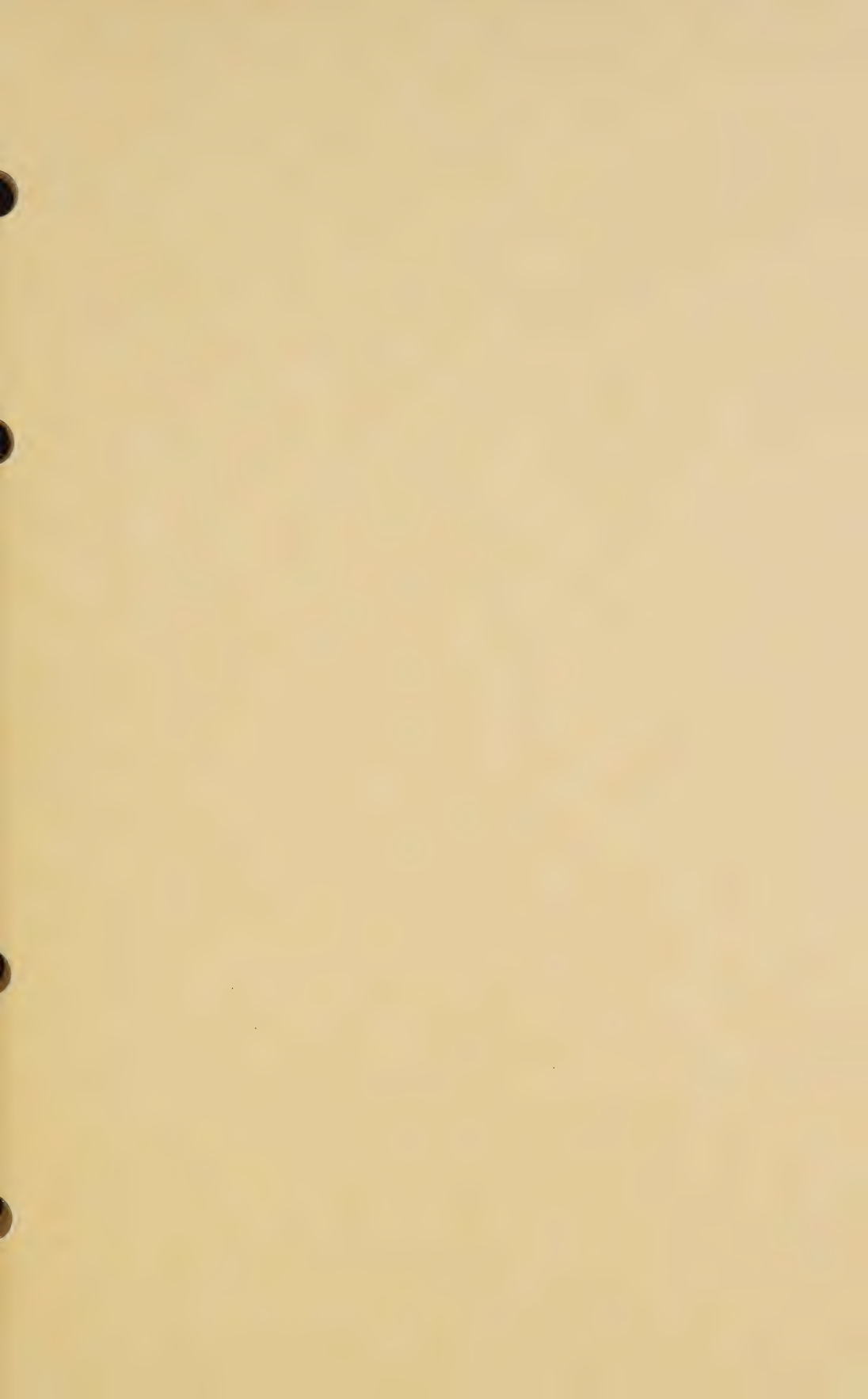
Of the remaining two, the heading **"CLAIMS MATTERS"** groups all the other miscellaneous legislative provisions which may affect a claimant's entitlement to benefit but in which the number of Umpire's decisions and their effect on claims generally are too minor to justify a distinct main subject heading. For instance, Antedate, Married Women's Regulations, Prescribed manner of making application, etc. For a greater understanding of the scope of this heading, the detailed subheadings themselves should be read.

The final heading **"ADJUDICATION PROCEEDINGS"** is provided for the detailed indexing of various decisions in which the Umpire has referred by comment or implicitly, to basic principles and practices developed over the years in the course and for the purpose of adjudication, which have been material to the eventual decision in a specific claim. For example, the practices before boards of referees, the rules and value of evidence, the principles of interpretation, etc.

It will be incidentally noted that a decision may be cited under a number of headings (let alone sub-headings). In many cases, this is because these main aspects were specifically raised in the particular adjudication by reason of several legislative provisions being invoked. In other cases however, the decision is listed as an example where such aspects were not specifically invoked, for a greater appreciation of the adjudication possibilities in the given situation. Similarly, there might appear to be some duplication as between sub-headings of a given aspect or as between several aspects; this detailed cross-indexing was adopted with a view to providing the greatest number of helpful case-references for the least prior information.

Finally, it will be noted that a given decision cited in the Subject Index is immediately followed by a set of brackets containing numbers; these are the references to the various decisions which themselves have been cited in the decision preceding the brackets. This additional information should permit in many cases locating immediately the leading decisions under that subheading or at least the one or two earlier decisions which most fully enuntiate the principle involved in that adjudication sub-aspect.

To complete the Digest, there is also provided (Part C), in order of Section number, the full text of every legislative provision cited in any of the digested decisions. The first section of this Part contains the Sections of the Act; the second section, Sections of the Regulations. Unless otherwise indicated, the legislative provisions are those in force since 1955; any amendments since will be provided, once they have been cited in a given decision, under their particular numerical reference.



A. LEGISLATIVE INDEX

I. THE SECTIONS OF THE ACT AS WELL AS RELATED REGULATIONS, if any, and their Subject Index headings and, where applicable, specific Subheadings, in relation to Umpire's decisions in which such Sections were cited (Actual text of such Sections is provided in Part C)

Section 2(j) CUBs 1446, 1514, 1606	Definition	LABOUR DISPUTE
Section 17(5) & Regs. 177, 178, 180 & 182	Board of Referees	ADJUDICATION PROCEEDINGS
Section 29(1)a) of R.S. 1952 CUB 1444		UNEMPLOYED
Section 42(c) & Regs. 116 & 117	Contribution refund	CLAIMS MATTERS
Section 42(f) & (g) & Regs. 172 & 173 CUBs 1445, 1449, 1458, 1463, 1472-3, 1486, 1531, 1537, 1561, 1564, 1567, 1586, 1590		EARNINGS
Sections 42 & 43	Contributions	CLAIMS MATTERS
Section 45 & Regs. 153 CUBs 1451, 1494	Establishment of benefit period and extension of qualifying period	CLAIMS MATTERS
Section 46(1) & (2) & Reg. 151	Benefit period cancellation	CLAIMS MATTERS
Section 46(3) & Reg. 150 CUBs 1452, 1454, 1478, 1536, 1546, 1549, 1554, 1562, 1570, 1593, 1608	Antedate	CLAIMS MATTERS
Section 47(1) & (2) CUB 1548	Rate of benefit	CLAIMS MATTERS
Section 47(3) & Reg. 168 CUBs 1487, 1510, 1553, 1556	Dependency	CLAIMS MATTERS
Section 48	Benefit period duration	CLAIMS MATTERS
Sections 49 to 53 CUB 1494	Seasonal benefit	CLAIMS MATTERS
Section 54(1) (See also S 57) CUBs 1444, 1445, 1455, 1458, 1463, 1467A, 1479, 1486, 1488, 1500, 1501, 1515, 1525A, 1527, 1534, 1537, 1543A, 1550, 1551, 1561, 1564, 1565, 1566, 1568, 1571, 1581, 1588, 1590, 1592, 1595, 1600, 1601, 1604, 1605		UNEMPLOYED
Section 54(2)a) CUBs 1462, 1468, 1469, 1476A, 1477, 1480, 1481, 1483, 1484, 1485, 1489, 1491, 1492, 1495, 1496, 1499, 1501, 1502, 1505, 1506, 1509, 1512, 1513, 1518, 1519, 1520, 1526, 1527, 1528, 1529, 1536, 1538, 1539, 1540, 1541, 1545, 1547, 1549, 1552, 1554, 1555, 1559A, 1560, 1563, 1573, 1577, 1578, 1579, 1582, 1583, 1585, 1587, 1597, 1598A, 1599, 1607, 1608		AVAILABILITY

Section 54(2)a) CUBs 1453, 1462, 1483, 1484, 1491, 1493, 1502, 1518, 1519, 1520, 1526, 1538, 1545, 1547, 1555, 1557, 1580, 1599		CAPABLE OF WORK
Section 54(2)a) CUB 1511	Unable to obtain	SUITABLE EMPLOYMENT
Section 55 & Reg. 152 CUBs 1493, 1580	Waiting period	CLAIMS MATTERS
Section 56 CUBs 1537, 1567, 1604, 1605	Allowable	EARNINGS
Section 57(1) & Reg. 158 CUBs 1455, 1458, 1463, 1467A, 1479, 1486, 1500, 1515, 1524, 1525A, 1534, 1537, 1543A, 1550, 1551, 1561, 1564 1565, 1566, 1568, 1571, 1581, 1588, 1590, 1592, 1595, 1600, 1601, 1604, 1605	Full working week	UNEMPLOYED
Section 57(2)a) & Reg. 154	Sundays	UNEMPLOYED
Section 57(2)b) & Reg. 155 CUBs 1604, 1605	Holidays	UNEMPLOYED
Section 57(2)c) & Reg. 158 (See S.57(1))	Full working week	UNEMPLOYED
Section 57(3) CUBs 1496, 1541, 1563	Students	UNEMPLOYED
Section 57(3) & Reg. 156 CUBs 1455, 1463, 1500, 1503, 1527, 1534, 1550, 1551, 1565, 1568	Farmers	UNEMPLOYED
Section 57(3) & Reg. 157	Relief of needy	UNEMPLOYED
Section 59 CUBs 1468, 1477, 1480, 1485, 1497, 1506, 1512, 1529, 1530, 1532, 1540, 1545, 1559A, 1576, 1579, 1582, 1583, 1587, 1594, 1597		SUITABLE EMPLOYMENT
Section 60(1) CUBs 1452, 1457, 1464, 1466, 1470, 1471, 1474, 1490, 1496, 1498, 1500, 1504, 1507A, 1508, 1523, 1528, 1532, 1542, 1544, 1552, 1572, 1574, 1575, 1577, 1587, 1596, 1599, 1603		VOLUNTARY LEAVING
Section 60(1) CUBs 1446, 1464, 1482, 1544, 1569		MISCONDUCT
Section 60(2)	Union activities not included	MISCONDUCT
Section 61 CUBs 1530, 1575	Union membership	MISCONDUCT
	Union membership	LABOUR DISPUTE
	Union membership	VOLUNTARY LEAVING
Section 62 CUB 1532,	Disqualification period (See also Disqual. duration under Main Subject Headings)	CLAIMS MATTERS

Section 63 CUBs 1446, 1447-8, 1450, 1459-60-61, 1475, 1476A, 1514, 1521A, 1522A, 1530, 1532, 1533, 1542, 1584, 1589, 1591, 1602, 1606, 1609,		LABOUR DISPUTE
Section 64 & Reg. 169	Residents outside Canada	CLAIMS MATTERS
Section 64 & Reg. 170	Inmates of public institutions	CLAIMS MATTERS
Section 65 CUBs 1463, 1481, 1492, 1501, 1511, 1515, 1524, 1525A, 1531, 1535, 1543A, 1553, 1560, 1565, 1567, 1592, 1599, 1601,	Punitive disqualification	CLAIMS MATTERS
Section 66 CUBs 1493, 1526, 1545, 1565, 1580, 1597, 1607	Sickness benefit	CAPABLE OF WORK
Section 67(1)a) & Reg. 171	Trustee	CLAIMS MATTERS
Section 67(1)b) & Reg. 160	Qualification re erroneous contributions	CLAIMS MATTERS
Section 67(1)c)(ii) & Regs. 162, 163 and 164	Seasonal workers	CLAIMS MATTERS
Section 67(1)c)iv) & Reg. 161	Married women	CLAIMS MATTERS
Section 67(3)a) & Regs. 174 & 175	Benefit overpayment, ratification & write-off	CLAIMS MATTERS
Section 67(3)b) & Reg. 168 (See S.47(3)) CUB 1556,	Dependency	CLAIMS MATTERS
Section 67(3)c)	Stoppage, duration	LABOUR DISPUTE
Section 67(3)d) & Reg. 158 (See S.57(1))	Full working week	UNEMPLOYED
Section 68 CUB 1529	Insurance Officer	ADJUDICATION PROCEEDINGS
Section 69 CUBs 1493, 1529, 1582	Insurance Officer	ADJUDICATION PROCEEDINGS
Section 70 & Reg. 179 CUB 1558	Board of Referees appeal	ADJUDICATION PROCEEDINGS
Section 71	Board of Referees decision	ADJUDICATION PROCEEDINGS
Section 72 & Reg. 184(1) CUB 1500	Umpire, appeal to	ADJUDICATION PROCEEDINGS
Section 73 & Reg. 183 CUBs 1597, 1599	Chairman, Board of referees: Leave to appeal	ADJUDICATION PROCEEDINGS
Section 74 CUB 1500	Umpire, Appeal to	ADJUDICATION PROCEEDINGS
Section 75 CUB 1496	Umpire, Time for appeal	ADJUDICATION PROCEEDINGS
Section 76 CUBs 1467A, 1474, 1475, 1495, 1507A, 1521A, 1522A, 1523, 1543A, 1550, 1559A, 1574, 1596, 1598A, 1601, 1602	Rehearing on Umpire's referral	ADJUDICATION PROCEEDINGS
Section 77	Umpire decision final	ADJUDICATION PROCEEDINGS
Section 78 & Reg. 186(4)	Umpire—Expenses of witness	ADJUDICATION PROCEEDINGS

Section 79 CUBs 1463, 1496, 1505, 1607	Disqualification: Revi- sion—New facts	ADJUDICATION PROCEEDINGS
	Rehearing	ADJUDICATION PROCEEDINGS
Section 80 & Reg. 167 CUBs 1452, 1581	Benefit pending appeal	CLAIMS MATTERS
Section 81	Jurisdiction—References & determination of question	ADJUDICATION PROCEEDINGS
Section 82(a) & (b) & Regs. 145, 146, 147 & 148	Prescribed manner for claim application, proof & reporting	CLAIMS MATTERS
Section 82(b) & Reg. 176, 177, 178, 180 and 182	Insurance officer	ADJUDICATION PROCEEDINGS
Sections 82(b) and 17(5) & Regs. 177, 178, 179, 180 and 182	Board of Referees	ADJUDICATION PROCEEDINGS
Section 82(b) & Reg. 181	Chairman, Board of Referees	ADJUDICATION PROCEEDINGS
Section 82(b) & Regs. 183(2), 184(2), 185, 186 & 187	Umpire	ADJUDICATION PROCEEDINGS
Section 82(c) & Reg. 134	Contributions interim	CLAIMS MATTERS
Section 82(c) & Reg. 166	Qualification —no benefit for interim contribu- tion	CLAIMS MATTERS
Section 82(d) & Reg. 165	Payments intervals for benefit	CLAIMS MATTERS
Section 82(e) & Reg. 99	Contributions— overlapping work	CLAIMS MATTERS
Section 82(e) & Reg. 173(5)	Overlapping work	EARNINGS
Section 96(3) & Reg. 127	Contributions— Documentary proof of stamps in employer's possession	CLAIMS MATTERS

II. THE REGULATIONS AS WELL AS RELATED SECTIONS OF THE ACT and their Subject Index subheadings and main headings in relation to Umpire's decisions in which such Regulations were cited (Actual text of such Regulations is provided in Part C)

Reg. 145(1) & (2) & Sec. 82(a) & (b)	Prescribed manner for application	CLAIMS MATTERS
Reg. 145(3) & Section 65	Punitive disqualification	CLAIMS MATTERS
Reg. 145 & Section 82(a) & (b) CUB 1501,	Prescribed manner for making claim	CLAIMS MATTERS
Reg. 147 & Section 82(a) & (b) CUB 1517,	Prescribed manner for reporting	CLAIMS MATTERS
Reg. 148 & Section 82(a) & (b)	Prescribed manner for making postal claim	CLAIMS MATTERS
Reg. 149 & Section 99(1)b)	Evidence, employer	ADJUDICATION PROCEEDINGS
Reg. 150 & Section 46(3) CUBs 1452, 1454, 1478, 1536, 1546, 1549, 1554, 1562, 1570, 1593,	Antedate	CLAIMS MATTERS
Reg. 151 & Section 46(4)	Benefit period cancellation	CLAIMS MATTERS

Reg. 152 & Section 55(1)	Waiting period	CLAIMS MATTERS
Reg. 153 & Section 45(3) & (4)	Extension of qualifying periods	CLAIMS MATTERS
Reg. 154 & Section 57(2)a)	Sundays	UNEMPLOYED
Reg. 155 & Section 57(2)b) CUBs 1604, 1605,	Holidays	UNEMPLOYED
Reg. 156 & Section 57(3) CUBs 1455, 1463, 1500, 1503, 1527, 1534, 1550, 1551, 1565, 1568,	Farmers	UNEMPLOYED
Reg. 157 & Section 57(3)	Relief	UNEMPLOYED
Reg. 158 & Sections 57 & 67(3) CUBs 1455, 1458, 1463, 1467A, 1479, 1486, 1488, 1500, 1515, 1524, 1525A, 1527, 1534, 1537, 1543A, 1550, 1551, 1561, 1564, 1565, 1566, 1568, 1571, 1581, 1588, 1590, 1592, 1595, 1600, 1601, 1604, 1605,	Full working week	UNEMPLOYED
Reg. 159 & Section 42(e)	Qualification— contributions deemed paid	CLAIMS MATTERS
Reg. 160 & Section 67(1)b)	Qualification— contributions paid in error ignored	CLAIMS MATTERS
Reg. 161 & Section 67(1)c) CUBs 1456, 1457, 1465, 1497, 1508, 1516, 1523, 1558,	Married women	CLAIMS MATTERS
Regs. 162, 163 & 164 & Section 76(1)c)ii)	Seasonal workers	CLAIMS MATTERS
Reg. 165 & Section 82(d)	Payment intervals for benefit	CLAIMS MATTERS
Reg. 166 & Section 82(c)	Qualification—No benefit for interim contributions	CLAIMS MATTERS
Reg. 167 & Section 80(2)b) CUB 1452,	Umpire appeal	ADJUDICATION PROCEEDINGS
Reg. 168(1) & (2) & Sec. 67(3)b) CUB 1556	Benefit pending appeal	CLAIMS MATTERS
Reg. 168(3) & Section 47(3)c)	Dependency	CLAIMS MATTERS
Reg. 169 & Section 64	Dependency; Residents outside Canada	CLAIMS MATTERS
Reg. 170 & Section 64	Residents outside Canada	CLAIMS MATTERS
Reg. 171 & Section 67(1)a)	Inmates of Institutions	CLAIMS MATTERS
Reg. 172 & Section 42(f) & (g) CUBs 1445, 1449, 1458, 1463, 1472-3, 1486, 1531, 1537, 1561, 1564, 1567, 1586	Trustee	CLAIMS MATTERS
Reg. 173 & Sections 42(f) & (g) and 82(e) CUBs 1458, 1561, 1564, 1586, 1590	Definition	EARNINGS
Reg. 174 & Section 67(3)a)	Allocation	EARNINGS
Reg. 175 & Section 67(3)a)	Overpayments ratification	CLAIMS MATTERS
	Overpayments write-off	CLAIMS MATTERS

Reg. 176 & Section 82(b)	Insurance officer powers	ADJUDICATION PROCEEDINGS
Reg. 177 & Section 17(5) CUBs 1474, 1507A	Board of Referees— constitution	ADJUDICATION PROCEEDINGS
Reg. 178 & Section 17(5)	Board of Referees— quorum	ADJUDICATION PROCEEDINGS
Reg. 179 & Section 70	Board of Referees— appeal	ADJUDICATION PROCEEDINGS
Reg. 180 & Secs. 17(5) & 82(b)	Board of Referees— hearing	ADJUDICATION PROCEEDINGS
Reg. 181 & Section 82(b)	Chairman of Board of Referees—investiga- tion	ADJUDICATION PROCEEDINGS
Reg. 182 & Secs. 82(b) & 17(5) CUB 1602	Board of Referees— decision	ADJUDICATION PROCEEDINGS
Reg. 183(1) & Section 73(1) CUB 1496	Chairman of Board of Referees—leave to appeal	ADJUDICATION PROCEEDINGS
Reg. 184(1) & Section 72	Umpire—appeal	ADJUDICATION PROCEEDINGS
Reg. 184(2) & Section 82(b)	Umpire—appellant	ADJUDICATION PROCEEDINGS
Reg. 185 & Section 82(b)	Umpire—appellant	ADJUDICATION PROCEEDINGS
Reg. 186 & Section 82(b)	Umpire—hearing	ADJUDICATION PROCEEDINGS
Reg. 187 & Section 82(b)	Umpire—decision	ADJUDICATION PROCEEDINGS

B. SUBJECT INDEX

I. ADJUDICATION PROCEEDINGS

BENEFIT OF DOUBT—See **Evidence**.

BOARD OF REFEREES (Aspects noted in particular decision).

Claimant present—CUBs 1444, 1453, 1482, 1488, 1500, 1504, 1511, 1515, 1518, 1523, 1525A, 1557, 1559A, 1566, 1568, 1571, 1597, 1599, 1601, 1602.

Credibility—(See Majority & Unanimous and also **Evidence**).

Examination of witnesses—CUBs 1444, 1453, 1467A, 1482, 1500, 1511, 1515, 1517, 1518, 1559A, 1568, 1571, 1597, 599, 1602.

Decision—(See Majority, Procedure & Unanimous).

Familiarity with local situation—CUBs 1447-8, 1489, 1491, 1516, 1518, 1520, 1535, 1541, 1547, 1550, 1551, 1559A, 1577, 1579, 1583, 1597.

Finding of fact—(See Majority decision and Unanimous).

Investigation by Board—CUBs 1467A, 1550, 1559.

Jurisdiction—beyond Board's—(See *Ultra vires*).

Majority decision—CUBs 1498, 1535, 1552, 1554, 1560, 1567, 1596.

—Finding of fact—CUBs 1453, 1492, 1501, 1511, 1515, 1520, 1523, 1578, 1592, 1603, (1575), 1607 (1538, 1547).

—Credibility (See also Unanimous decision and **Evidence**)—CUBs 1482, 1511, 1515, 1517, 1520, 1535, 1543, 1546, 1549, 1560, 1585.

—Labour dispute—CUBs 1459-60-61, 1552, 1560, 1567.

Procedure (See also Rehearing and *Ultra vires*)—CUBs 1480, 1481, 1482, 1493, 1494, 1496, 1501, 1529, 1588, 1596, 1598, 1601, 1602.

Recusation—CUBs 1474, 1507A.

Rehearing (Sec. 79)—See also **Rehearing on Umpire's Referral**.

—At Board's instance—CUBs 1468, 1581, 1601, 1602.

—At insurance officer's request—CUBs 1481, 1482, 1557.

Ultra vires (beyond Board's jurisdiction)—CUBs 1529, 1553, 1582 (1221, 1308 and 1529).

Unanimous decision—

—General—CUBs 1457, 1477, 1481, 1490, 1491, 1494, 1513, 1514, 1528, 1561, 1570, 1571, 1572, 1573, 1575, 1580, 1594, 1597, 1604, 1608.

—Credibility (See also Majority decision and **Evidence**)—CUBs 1444, 1452, 1456, 1457, 1463, 1465, 1467A, 1468, 1476A, 1479, 1480, 1482, 1500, 1502, 1505, 1508, 1509, 1511, 1518, 1525A, 1531, 1538, 1545, 1550, 1555, 1557, 1566, 1568, 1571, 1593, 1595, 1599, 1600, 1606.

—Finding of fact—CUBs 1444, 1447-8, 1456, 1457, 1462, 1463, 1466, 1476A, 1485, 1488, 1489, 1491, 1500, 1506, 1510, 1516, 1518, 1519, 1521A, 1526, 1528, 1534, 1538, 1541, 1547, 1551, 1553, 1555, 1557, 1559A, 1565, 1566, 1568, 1577, 1579, 1583, 1587, 1588, 1589, (1148), 1595, 1598A, 1600, 1604, 1605, 1606.

—Reversed—CUBs 1448, 1455, 1456, 1463, 1472-73, 1479, 1482, 1483, 1484, 1486 (1212), 1493 (1341), 1499, 1500, 1513, 1516, 1519, 1524, 1526, 1529, 1531, 1537, 1539, 1542, 1545, 1551, 1561, 1564, 1571, 1573, 1577, 1580, 1581, 1583, 1584, 1587, 1591 (622 and 761), 1595, 1609.

—Varied—CUBs 1462, 1469, 1470, 1471, 1496, 1497, 1500, 1504, 1505, 1509, 1553, 1565, 1572, 1582, 1588, 1605.

CHAIRMAN OF BOARD OF REFEREES (See also **Umpire**—Appeal, leave to—CUBs 1570, 1590, 1599, 1601, 1602).

COMMISSION'S RESPONSIBILITY RE

Adjudication Procedures (See also **Evidence**—Burden of proof)—CUBs 1493 (1341), 1496, 1550, 1558, 1607.

Claims Procedures—CUBs 1450, 1451 (1336), 1452, 1510, 1517, 1546, 1549, 1554, 1556, 1563, 1570, 1581, 1586, 1595, 1596, 1608.

Disqualification Procedure—CUBs 1450, 1558.

Estoppel against Commission (See **Estoppel**).

Notices generally—CUB 1478.

Policy—CUBs 1458, 1478, 1556.

CREDIBILITY—(See **Evidence** and **Board of Referees**).

DISQUALIFICATION (See also under each of other Main Headings).

Extenuating circumstances—CUBs 1470, 1471, 1489, 1499 (930), 1504, 1507A, 1562, 1569, 1572, 1580, 1594, 1603.

Indefinite—CUBs 1478, 1505, 1534, 1552, 1568.

Joint—CUBs 1457, 1480, 1526, 1577.

Procedure (See also under **Board of Referees** and **Commission**)—CUBs 1445, 1478, 1480, 1483, 1484, 1485, 1516, 1529, 1553, 1582, 1586.

Punitive (See also **CLAIMS MATTERS**)—CUBS 1463, 1515, 1524, 1525A, 1526, 1535, 1543, 1560, 1567, 1592, 1601.

Retroactive (See also **AVAILABILITY & UNEMPLOYED**)—CUBs 1452, 1481, 1505, 1515, 1568.

Revision (on new facts etc.) (Sec. 79)—CUBs 1445, 1463, 1495, 1496, 1497, 1498 (639), 1501, 1505 (766), 1528, 1529, 1552, 1553, 1607.

Wording—CUBs 1463, 1478.

DOUBT—See **Evidence**.

EMPLOYER—See **Evidence**.

ESTOPPEL—(See also **Commission**)—CUBs 1458, 1491 (338), 1581, 1586, 1595.

EVIDENCE (See also Proof under each **MAIN HEADING**).

Admissions, see Statements.

Benefit of Doubt—CUBs 1444, 1450, 1480, 1481, 1482 (405), 1492, 1497, 1501, 1510, 1513, 1515, 1524, 1536, 1539, 1546, 1571, 1588, 1589 (1148).

Burden of Proof—

On Administration—CUBs 1464, 1483, 1484, 1515, 1516, 1519, 1520, 1527, 1529, 1531, 1532 (Viz.), 1535, 1537, 1540, 1550, 1551, 1552, 1553, 1560, 1574, 1578, 1589, 1591 (622 and 761), 1595, 1598, 1600.

On claimant—CUBs 1454, 1456, 1463, 1478 (1340), 1487, 1492, 1496, 1502 (1097), 1505 (766 and 1141), 1511, 1514, 1515, 1516, 1519, 1521A (85), 1528 (1496), 1531, 1532 (Viz.), 1534, 1541, 1543, 1549, 1550, 1552, 1553, 1554, 1555, 1558, 1562, 1563 (1249), 1565, 1566 (1392 and 1537), 1567, 1568, 1571, 1573, 1574, 1575, 1579, 1582, 1583, 1584, 1585, 1591 (622 and 761), 1592, 1593 (116, 395, 1454), 1595, 1600, 1601, 1603 (1575), 1608 (1454).

Claims record—CUBs 1531, 1575 (1113), 1576 (887, 961, 1113).

Conclusive (See also Benefit of doubt and Weight of evidence)—CUBs 1469, 1495, 1496.

Contributions record—CUBs 1455, 1463, 1500, 1503, 1550, 1551, 1560, 1595.

Credibility—(See Benefit of doubt, Medical certificates, Statements and also under **Board of Referees**)—CUBs 1444, 1452, 1469, 1481, 1492, 1505, 1509, 1511, 1517, 1523, 1524, 1525A, 1531, 1539, 1540, 1546, 1549, 1554, 1555, 1560, 1566, 1568, 1571, 1578, 1588 (1148), 1589 (1148), 1592, 1597, 1608 (1454).

Documentary (See also Medical and Oath)—CUBs 1444, 1452, 1479, 1496, 1545, 1553, 1555, 1557, 1567, 1598.

Employment history—CUBs 1456, 1463, 1469, 1470, 1481, 1524, 1537, 1551, 1566 (1439), 1573 (1249), 1595, 1600.

Employment officer opinion—CUBs 1509 (1484), 1513 (1484), 1516, 1520, 1578, 1579, 1582, 1587 (782 and 486), 1598.

Employer.

Finding—CUB 1569.

Information (See also Employment history)—CUBs 1444 1449, 1451 (1336), 1456, 1464, 1467A, 1476A, 1482, 1483, 1484, 1511, 1516, 1519, 1523, 1532, 1534, 1540, 1550, 1558, 1569, 1581, 1584, 1585, 1588, 1592, 1595, 1596, 1598, 1602, 1606, 1607.

Responsibility—CUBs 1515, 1534, 1569.

Enforcement officer finding—CUBs 1444, 1463, 1467A, 1486, 1515, 1525A, 1543, 1553, 1566, 1567, 1571, 1588, 1595, 1598, 1600.

Finding of fact, see under **Board of Referees** and also **Question of Fact**.

Irrelevant to decision (See also **LABOUR DISPUTE**—Merits irrelevant)—CUBs 1447-8, 1450, 1453, 1467A, 1468, 1510, 1521A, 1522A, 1530, 1534, 1562, 1563, 1565, 1606, 1609.

Medical certificates and testimony—CUBs 1456, 1462, 1464, 1465 (1221), 1481, 1489, 1497, 1520, 1526, 1539, 1545, 1557, 1585, 1597, 1599, 1607.

Oath (Evidence under)—CUBs 1444, 1479, 1481, 1482, 1525.

Onus of proof—See Burden.

Presumption (prima facie) (See also under **AVAILABILITY**)—CUBs 1467A, 1499 (930), 1502, 1505 (766 and 1141), 1513 (530, 620, 930, 621), 1519, 1524, 1528, 1535, 1537, 1543, 1552, 1553, 1563 (1249), 1573, 1585, 1594, 1608.

Rules of evidence (See also Burden & Oath)—CUBs 1521, 1522, 1525A.

Rules of Interpretation, see **Interpretation**.

Statements or admissions (See also Credibility).

Before disqualification—CUBs 1444, 1469, 1477, 1488, 1499 (930), 1519, 1520, 1525A, 1526, 1531, 1540, 1543, 1550, 1555, 1559A, 1565, 1566, 1571, 1573, 1578, 1585, 1587, 1592, 1595, 1597, 1598, 1599, 1600, 1603, 1607, 1608.

After disqualification—CUBs 1444, 1453, 1454, 1456, 1462, 1469, 1479, 1480, 1481, 1488, 1498 (639), 1505 (1340), 1515, 1520, 1525A, 1528, 1534, 1535, 1537, 1540, 1543, 1545, 1549, 1552, (564, 1220, 1268), 1554, 1555, 1557, 1559A, 1560, 1566, 1567, 1573, 1577, 1578, 1584, 1585, 1589, 1593, 1595, 1598, 1607, 1608, 1609.

After Board of Referees (See also **Rehearing**)—CUBs 1444, 1453, 1467A, 1481, 1495, 1516, 1523, 1525A, 1543A, 1550, 1559A, 1573, 1581, 1584, 1588, 1595, 1596, 1601, 1602, 1609.

Unanimous decision of Board of Referees--See **Board**, unanimous.

Weight of evidence—CUBs 1483, 1484, 1488, 1502, 1509 (1484), 1513 (621), 1515, 1519, 1524, 1526, 1532 (Viz.), 1537, 1539, 1540, 1541, 1552, 1554, 1557, 1560, 1567, 1606.

EXTENUATING CIRCUMSTANCES, see **Disqualification**

FACTS (For Finding of fact, see under **Board of Referees**—majority decision and unanimous; for Question of fact, see under **Question**; for new facts, see under **Rehearing on Umpire's Referral**).

INSURANCE OFFICER (See also **Board of Referees**—rehearing **Disqualification** and **Jurisdiction**—Aspect raised).

General—CUBs 1444, 1450, 1452, 1464, 1483, 1484, 1491, 1496, 1498, 1505, (766 and 134), 1509 (1484), 1529 (1251 and 1308), 1537, 1550, 1567, 1577, 1578, 1582, 1595, 1596, 1598, 1607, 1609.

Re-examination after decision—CUBs 1444, 1452, 1545.

INTERPRETATION (See also **Estoppel** and **MISCONDUCT**—Tantamount to Voluntary Leaving)—CUBs 1445, 1447-8 (641), 1449, 1450, 1452, 1453, 1458, (246, 1443), 1472-3, 1486 (1404), 1487, 1493, 1494, 1503, 1508, 1510, 1515, 1517, 1519, 1522A, 1527, 1528, 1530, 1531, 1532 (Viz.), 1533, 1534, 1542, 1548, 1550, 1556, 1558, 1561, 1562, 1564, 1565, 1566, 1580 (1341, 1493), 1586, 1589 (1148), 1590, 1604, 1605, 1606.

JURISDICTION OF ADJUDICATING AUTHORITY (See also **Board of Referees**—ultra vires).

Aspect not brought to appeal—CUBs 1450, 1453, 1456, 1477, 1508, 1525A, 1527, 1529 (1527), 1559A, 1577, 1604, 1605.

Aspect raised by adjudication—CUBs 1444, 1452, 1488, 1501, 1516, 1527, 1529 (1527), 1532 (Viz.), 1545, 1549, 1554, 1565, 1570 (626), 1592, 1595, 1604, 1605.

Legislation—CUBs 1469, 1472-3, 1494, 1548, 1556.

Policy—See also **Commission**—CUBs 1458 (1443), 1548.

Procedure—(See also **Commission**)—CUB 1563.

Revision of disqualification, see **Disqualification**.

PROOF—See **Evidence**.

QUESTION OF FACT—(For new facts see **Rehearing**; for finding of fact, see under **Board of Referees**—majority decision and unanimous)—CUBs 1444, 1447 (641), 1453, 1466, 1489, 1505, 1510, 1520, 1534, 1541, 1553, 1555, 1559A, 1565, 1566, 1568, 1572, 1579, 1583.

REHEARING ON UMPIRE'S REFERRAL (Sec. 76) (See also **Board of Referees**—Rehearing).

New Facts submitted—CUBs 1467A, 1475, 1481, 1495, 1523, 1525A, 1543A, 1550, 1559, 1588, 1596, 1601.

New Facts needed—CUBs 1467A, 1476A, 1521A, 1522A, 1550, 1559, 1574, 1596, 1598.

Other Reasons—CUBs 1474, 1507A, 1559, 1602.

UMPIRE

Appeal to (Sec.73(1))—CUBs 1496, 1597, 1599.

Appellants—CUBs 1500 (1264, 1285-86-87 & 89, 1438).

Decision—CUBs 1447-8 (641), 1450, 1456, 1457, 1493 (1341), 1529 (1527), 1577.

Hearing—CUBs 1481, 1532, 1584.

Rehearing (See above).

II. AVAILABILITY (Sec. 54(2)a)

ABSENCE FROM LOCAL OFFICE AREA—CUBs 1549, 1554, 1562 (1244).

ANTEDATE involving Availability—CUBs 1452, 1454, 1478, 1536, 1549, 1554, 1562.

CAPABLE OF WORK, Available while not fully (See also **Pregnancy**)—CUBs 1454, 1462, 1478 (1340), 1483, 1484, 1491, 1499, 1502, 1509 (1484), 1513 (530, 620, 930 & 621), 1518, 1519, 1520, 1526, 1538, 1545, 1547 (1518), 1555 (1483 & 1484), 1597, 1599, 1607 (1538, 1547).

CIRCUMSTANCES (See also **Domestic, Personal**) beyond claimant's control or deliberately created (See also **CLAIMS MATTERS**—**Antedate**)—CUBs 1494, 1492 (1138, 1154 and 1161), 1541, 1552, 1563 (1374), 1608 (1454).

DEFINITION AND EXAMPLES—CUBs 1489, 1541 (1138), 1585 (1184).

DISQUALIFICATION DURATION (See also **Suitable Employment Refused** and **Voluntary Leaving** hereunder).

Generally (Circumstances affecting duration)—CUBs 1469, 1477, 1496, 1499 (930), 1502 (1097), 1528, 1552, 1582.

Indefinite—CUBs 1468, 1477, 1478, 1485, 1505, 1526, 1547.

Retroactive—CUBs 1481, 1485, 1501, 1505 (766), 1526, 1545, 1549, 1554.

Shortened—CUBs 1462, 1480, 1496, 1505, 1509, 1526, 1528, 1552.

DOMESTIC CIRCUMSTANCES—(See also **Personal and Pregnancy**)—CUBs 1469 1478 (1340), 1489, 1502, 1505 (1340), 1509 (1484), 1516, 1539, 1540, 1559, 1577, 1578, 1579, 1587.

EFFORTS TO FIND WORK—CUBs 1483 (484), 1484, 1492, 1496, 1501, 1513 (621), 1528 (1246 and 1249), 1539, 1540, 1560, 1573 (1249), 1585, 1598.

EMPLOYMENT PROSPECTS, see **Prospects**.

ENGAGED ON OWN ACCOUNT, Available While: See **UNEMPLOYED**, Available.

FAMILY ENTERPRISE—CUBs 1467, 1560.

INDEFINITE, see **Disqualification**.

INTENTION OF CLAIMANT re Availability (For Students, see below)—CUBs 1462, 1467A, 1476A, 1480, 1496, 1499 (930), 1501, 1502, 1506, 1509, 1513 (620 & 621), 1518, 1527, 1528, 1536, 1540, 1545, 1547 (1518), 1555 (1483 and 1484), 1573, 1577, 1585 (1184), 1597, 1599.

MARRIED WOMEN (See also under **CLAIMS MATTERS**)—CUBs 1509 (1484), 1516, 1529 (1527).

PERSONAL CIRCUMSTANCES (See also **Domestic**), CUBs 1468, 1477, 1506, 1512 (961), 1562.

PREGNANCY OF CLAIMANT (For Claimant's wife, See **Domestic**)—CUBs 1468 (1152A), 1478, 1480, 1481, 1483, 1484, 1499 (930), 1502 (1097), 1505 (766 & 1141), 1509 (1484), 1513 (530, 620, 621, 930), 1539, 1555 (1483 and 1484), 1585, 1597 (1093, 1077), 1608.

PRESUMPTION OF NON-AVAILABILITY (For **Students**, See below)—CUBs 1467, 1478 (1340), 1499 (930), 1502 (1097), 1505 (766 and 1141), 1509 (1484), 1513 (530, 620, 621, 930), 1519 (960 and 1175), 1529 (1527), 1536, 1552, 1553, 1560, 1573 (1249, 1563), 1585 (1184), 1597, 1608.

PROOF (See also **Presumption**)—CUBs 1452, 1454, 1462, 1467, 1469, 1480, 1481 (1376), 1483, 1484, 1489, 1491, 1492, 1495, 1496, 1499 (930), 1501, 1502, 1505 (766 and 1141), 1509 (1484), 1512, 1513 (621), 1519 (960 and 1175), 1520, 1526, 1528 (1496), 1536, 1539, 1540, 1541, 1545, 1552, 1555 (1483 and 1484), 1559, 1560, 1562 (1244), 1563 (1249), 1573 (1249), 1578, 1579, 1583, 1585, 1587, 1597, 1598, 1599.

PROSPECTS OF EMPLOYMENT—CUBs 1462, 1477, 1483, 1484, 1489, 1491, 1492, 1495, 1501, 1502, 1512, 1513 (1484), 1516 (1103), 1520, 1529, 1540, 1541 (1138), 1547 (1518), 1552, 1559, 1562 (1244), 1573, 1578, 1579, 1583, 1585, 1587 (782 and 486), 1598, 1607 (1538 and 1547).

RESTRICTED AS TO

Area—CUBs 1481, 1485, 1489, 1491, 1492 (1138, 1154, 1161), 1501, 1516, 1529, 1552, 1559, 1577, 1578, 1587, 1598.

Duration—CUBs 1477 (594 and 1171), 1483, 1484, 1492, 1495, 1496, 1518, 1519, 1538, 1547 (1518), 1577, 1604, 1605, 1607 (1538, 1547).

Generally—CUBs 1476A, 1477 (594 and 1171), 1489, 1491, 1506, 1513, 1520, 1526, 1527, 1545, 1547, 1552, 1555, 1559.

Hours, days—CUBs 1469, 1476A, 1502, 1512 (961), 1520, 1541 (1138, 1154 and 1161), 1587 (782, 486 and 1290).

Light work (See also Occupation)—CUBs 1462, 1547 (1518), 1585 (1184), 1597, 1607 (1538, 1547).

Occupation--CUBs 1462, 1468, 1476A, 1501, 1502, 1512, 1520, 1538, 1540, 1547, 1552, 1578, 1579, 1583, 1598.

Overtime--CUB 1540.

Seasons--CUBs 1492, 1495, 1506, 1604, 1605.

Shifts--CUBs 1468, 1512 (961).

Travel--CUBs 1481, 1491, 1509, 1512, 1516, 1540, 1559, 1587.

Wages--CUBs 1481, 1485, 1506, 1579, 1583, 1598.

RETIRED OR SEPARATED FROM REGULAR EMPLOYMENT—CUBs 1467, 1476A, 1478, 1491, 1527, 1585.

RETROACTIVE, see under **Disqualification**.

SEASONS, see under **Restricted**.

SEPARATED, see **Retired**.

SUBJECTIVE AVAILABILITY, see **Intention**.

STUDENTS (See also under **SUITABLE EMPLOYMENT**).

Not directed and presumed non-availability unrebutted--CUBs 1492 (1138, 1154, 1161), 1528 (1189, 1246, 1249, 1324 and 1401), 1541, 1563 (1249).

Course's Compatibility (presumed non-availability rebutted) in relation to usual occupation's.

—Off-season—CUBs 1492, 1495, 1563 (1249) 1572, 1573.

—Usual working hours—CUBs 1492, 1563 (1249).

General unemployment--CUB 1573 (1249).

Intention re work --CUBs 1492, 1495, 1496, 1541 (1138), 1563 (1249).

Direction to course (Sec. 57(3))—CUBs 1496, 1528.

SUITABLE EMPLOYMENT REFUSED (Sec. 59)

General--CUBs 1501, 1539, 1552 (1539).

Joint disqualification--CUBs 1468, 1477, 1480, 1485, 1506, 1512, 1529, 1540, 1545, 1559, 1579 (1350), 1583 (1350), 1587, 1597.

Disqualification only as not available--CUBs 1481, 1489, 1492, 1526.

Prior refusal without disqualification--CUB 1468.

Voluntarily left in first place--CUBs 1468, 1477, 1480, 1481, 1489, 1526, 1529, 1539, 1552, 1579, 1597.

TEMPORARY NON-AVAILABILITY (See also **Disqualification Duration & Pregnancy**)—CUBs 1538, 1562 (1244), 1577, 1607 (1538, 1547).

VOLUNTARY LEFT

Delayed claim--CUBs 1452, 1454, 1468, 1480, 1481, 1513, 1520, 1526, 1539, 1541, 1579.

Disqualification only as not available--CUBs 1489, 1499, 1502, 1513, 1547, 1585.

Disqualification only for voluntary leaving (Sec. 60(1))--CUB 1587.

Joint disqualification--CUBs 1496, 1528, 1552, 1599.

Just cause--CUBs 1513, 1516, 1528, 1529, 1577, 1578.

Voluntary leaving ignored by insurance officer --CUBs 1467, 1489, 1513, 1516, 1520, 1529, 1560.

III. CAPABLE OF WORK (Section 54(2)a)

AVAILABILITY AFFECTED AS RESULT (See also **Pregnancy**)—CUBs 1462, 1483, 1484, 1491, 1518, 1519, 1520, 1526, 1538, 1545, 1547 (1518), 1555 (1483 and 1484), 1597, 1599, 1607 (1538, 1547).

DEFINITION AND EXAMPLES—CUB 1453 (1077).

DISQUALIFICATION DURATION.

MARRIED WOMEN'S REGULATIONS (Reg. 161)—CUBs 1456, 1465 (1221), 1558.

PERMANENT INCAPACITY—CUBs 1454, 1465 (1221), 1557 (1491), 1570 (626).

PREGNANCY—CUBs 1456, 1465, 1483, 1484, 1502 (1097), 1555, 1558 (1183, 1093, 1094), 1597 (1093, 1077).

PROOF—CUBs 1453 (1077, 1207), 1454, 1526, 1545, 1547, 1555, 1557, 1570, 1597 (1093, 1077), 1599, 1607.

RETIRED FROM FORMER EMPLOYMENT—CUBs 1491, 1557.

SEPARATION FROM EMPLOYMENT IN THIS CONNECTION (See also **VOLUNTARY LEAVING**)—CUBs 1453, 1454, 1456, 1462, 1465, 1483, 1484, 1502, 1518, 1519, 1520, 1526, 1538, 1547, 1548, 1557, 1558, 1570, 1597, 1599, 1607 (1538, 1547).

SICKNESS BENEFIT (Sec. 66) (See also **CLAIMS MATTERS**—Waiting period)
CUBs 1493 (1341), 1526, 1545, 1557, 1558 (1183, 1093, 1094), 1565, 1580 (1341, 1493), 1597 (1093, 1077), 1599, 1607.

SUITABILITY FOR EMPLOYMENT (See also **SUITABLE EMPLOYMENT—Capability**).

Likely to be offered—CUBs 1462, 1483, 1484, 1491, 1502, 1518, 1519, 1520, 1538, 1547 (1518), 1555, 1557 (1491), 1570 (626), 1607 (1538, 1547).

Offered and refused—CUBs 1545, 1597.

WORKMEN'S COMPENSATION—CUB 1454.

IV. CLAIMS MATTERS

ANTEDATE (Sec. 46(3) and Reg. 150)—CUBs 1452, 1454, 1478, 1536, 1546, 1549, 1554, 1562, 1570 (1454), 1593 (116, 395, 1454), 1608 (1454).

BENEFIT PENDING APPEAL (See **Suspension Pending**).

BENEFIT PERIOD (DURATION, COMMENCEMENT, CANCELLATION) (Sec. 45 and Reg. 153)—CUBs 1451.

BENEFIT RATE—See **Rate**.

BOARD OF REFEREES (See **ADJUDICATION PROCEEDINGS**).

CONTRIBUTIONS (See also **Qualification**)—CUBs 1469, 1491 (338), 1548.

DECEASED (See **Trustee**).

DEPENDENCY (Sec. 47(3) & Reg. 168)—CUBs 1444, 1487, 1510, 1553, 1556.

DISQUALIFICATION PERIOD (Sec. 62)—CUB 1558.

DISQUALIFICATION PROCEDURE, (see **ADJUDICATION PROCEEDINGS**).

INCAPACITATED (See **Trustee**).

INMATES OF PUBLIC INSTITUTIONS (Sec. 64 and Reg. 170).

INSURANCE OFFICER (See **ADJUDICATION PROCEEDINGS**).

LOCAL OFFICE PRACTICES—CUBs 1451 (1336), 1469, 1478, 1517, 1536, 1546, 1549, 1554, 1562 (1244), 1570, 1608.

MARRIED WOMEN REGULATION (Sec. 67(1)c)iv) and Reg. 161)—CUBs 1456, 1457, 1465 (1221), 1497, 1508, 1516 (1103), 1523, 1558 (1093, 1094, 1183).

OVERPAYMENT, RATIFICATION, RECOVERY & WRITE OFF (Sec. 67(3)b) & Regs. 174 & 175)—CUB 1586.

PAYMENT INTERVALS FOR BENEFIT (Sec. 82(d) & Reg. 165).

PENDING APPEAL, BENEFIT (Sec. 80 and Reg. 167).

PRESCRIBED MANNER OF MAKING A CLAIM AND PROOF & OF REPORTING WEEKLY ETC. (See also **PROOF** under other **MAIN HEADINGS**) (Sec. 82(a) & (b) and Regs. 145, 146, 147 & 148)—CUBs 1454, 1501, 1517, 1535, 1546, 1549, 1554, 1562 (1244).

PROOF (See **Prescribed** above & also under **MAIN HEADINGS**).

PUBLIC INMATES, see **Inmates**.

PUNITIVE DISQUALIFICATION (Sec. 65 & Reg. 145(3), (See also **ADJUDICATION PROCEEDINGS—Disqualification**)—CUBs 1453, 1463, 1481, (1376), 1492 (1481), 1501, 1511, 1515 (1481), 1525A, 1531, 1535, 1553, 1560, 1565, 1567, 1592.

QUALIFICATION (Sec. 45)—CUBs 1451, 1494.

RATE OF BENEFIT (Secs. 47 & 69 (3))—CUBs 1469, 1493, 1548.

RESIDENTS OUTSIDE CANADA (Sec. 64 and Reg. 169).

SEASONAL BENEFITS (Secs. 49 to 53)—CUB 1494.

SUSPENSION OF BENEFIT PENDING APPEAL (Sec. 80 & Reg. 167)—CUB 1452.

TRUSTEE (Sec. 67(1)a) & Reg. 171) **IN CASE OF INCAPACITATED, DECEASED OR UNSOUND MIND.**

UMPIRE (See **ADJUDICATION PROCEEDINGS**).

WAITING PERIOD (Sec. 55 & Reg. 152)—CUBs 1493 (1341), 1580 (1341 & 1493).

V. EARNINGS (Sections 42(f) & (g) & 56 and Regs. 172 & 173)

(See also **UNEMPLOYED—Earnings**)

ALLOCATION OF EARNINGS—CUBs 1445, 1458 (246, 1443), 1479, 1561 (1443, 1445), 1449, 1564 (1443 & 1445), 1581 (1443), 1590.

ALLOWABLE (Sec. 56)—CUBs 1546, 1548, 1586.

BOARD AND LODGINGS—CUB 1486.

BONUSES—CUBs 1458 (1443), 1586.

BUSINESS ON OWN ACCOUNT (See also **UNEMPLOYED**)—CUBs 1463, 1479, 1537, 1567.

COMPENSATION, WORKMEN'S

DETERMINATION OF—CUBs 1479, 1486, 1537.

EXPENSES, See **Net Earnings**.

GRATUITY, See **Bonuses**.

HOLIDAY PAY (See also **Overtime**)—CUBs 1546, 1561 (1443, 1445), 1564 (1443, 1445), 1581 (1443).

NET EARNINGS (Reg. 172(3))—CUBs 1537, 1567.

OVERTIME CREDITS—CUBs 1458 (246, 1443), 1561 (1443, 1445), 1564 (1443, 1445), 1581 (1443) 1590 (1443, 1458, 1461, 1464 & 1581).

PROOF—CUBs 1537, 1567.

REINSTATEMENT DAMAGES—CUBs 1445 (1443), 1449 (1443), 1472-3.

REPORTING—CUBs 1463, 1531, 1535, 1567, 1586.

RETAINER—CUB 1581.

RETIREMENT PAY—CUB 1451.

SERVICES PERFORMED—CUBs 1445 (1443), 1449 (1443), 1463, 1472-3, 1486 (1404).

USUAL REMUNERATION (See also **Overtime Credits & UNEMPLOYED**)—CUBs 1445, 1449 (1443), 1458 (246, 1443), 1561 (1443), 1564 (1443, 1445), 1581 (1443), 1590 (1443, 1458, 1461, 1464 & 1581).

VI. LABOUR DISPUTE (Section 63)

ATTRIBUTABLE TO LABOUR DISPUTE—CUBs 1446, 1447, 1448, 1514, 1521A, 1522A, 1530, 1532, 1533 (570 and 1142), 1542, 1606.

CONDITIONS OF EMPLOYMENT (For Union Existence—See below)—CUBs 1446, 1447-8 (751, 1136), 1521A (156, 423, 528, 540, 622, 1121, 1142, 1147, 1309, 1385 and 1514), 1522A, 1530, 1532 (1386), 1542, 1584, 1591 (622), 1606, 1609.

DEFINITION AND EXAMPLES—CUBs 1446, 1522 & 1522A, 1530, 1532, 1533, 1542.

DIRECTLY INTERESTED—CUBs 1514 (85), 1521A (156, 423, 528, 540, 622, 1121, 1142, 1147, 1309, 1385 & 1514), 1522A, 1532 (1142, 1386), 1533, 1584, 1591 (622 & 761), 1606, 1609.

DISQUALIFICATION (See **Termination**).

DURATION—CUBs 1450, 1514 (570), 1533, 1542 (751, 1147, 1151), 1584.

EXISTENCE OF LABOUR DISPUTE—CUBs 1446, 1447-8, 1450, 1514, 1530, 1532, 1533 (570 & 1142).

EXTENSION OF LABOUR DISPUTE—CUBs 1532 (1035, 1142, 1201).

FINANCING—CUBs 1450, 1459 (1450), 1521A, 1522A, 1584, 1606, 1609.

GRADE OR CLASS—CUBs 1450, 1459 (1450), 1591 (761), 1606, 1609.

INCIDENTS CHARACTERISTIC OF LABOUR DISPUTE—CUBs 1447-8, 1514 (570), 1530, 1533, 1606.

INSISTENCE AND RESISTANCE OF PARTIES—CUBs 1447-8 (751), 1533, 1542.

LOSS OF EMPLOYMENT—CUBs 1514, 1530, 1532, 1606.

MERITS IRRELEVANT—CUBs 1530, 1533 (570, 827, 870, 890 & 1142), 1447-8, 1450.

MISCONDUCT (See also **MISCONDUCT**)—CUBs 1446, 1533.

PARTICIPATION (See also **Picketing** and **Sympathetic**)—CUBs 1521A (981), 1522A, 1532, 1584, 1591 (622 & 761), 1606, 1609.

PICKETING—CUBs 1514, 1532 (457, 1109, 1201, 1386), 1584, 1591 (662), 1606, 1609.

PREMISES (Sec. 63 (3))—CUBs 1522A, 1532 (1035, 1142, 1201, 1386).

PROOF—CUBs 1446 (751), 1447-8, 1475, 1514, 1521A (156, 423, 528, 540, 622, 1121, 1142, 1147, 1309, 1386 & 1514), 1522A, 1532, 1584, 1591, 1602, 1606.

RELIEF—CUBs 1514, 1521A (85), 1522A, 1584, 1606, 1609.

SEPARATE PREMISES—See **Premises**.

SEPARATION PRIOR TO STOPPAGE.

SHORTAGE OF WORK—CUBs 1447-8, 1521A, 1522A, 1591, 1606.

STOPPAGE OF WORK (Subsection (1))—CUBs 1446, 1447-8, 1514, 1530, 1533 (570, 827, 870, 890 & 1142), 1542 (751, 1147, 1151).

SUITABLE EMPLOYMENT REFUSED (Sec. 61).By employee involved in dispute--CUB 1530.By new employee.**SYMPATHETIC STRIKE OR LOCKOUT**--CUBs 1522A, 1532 (1035, 1386).**TERMINATION (OF DISQUALIFICATION).**Bona fide employed elsewhere--CUB 1589 (1184).Regularly engaged in another occupation--CUB 1589.End of stoppage--CUBs 1514 (570), 1533.Other--CUB 1450.**UNION.**Existence--CUBs 1446 (751 and 1136), 1447-8 (751 and 1136), 1530, 1533.Membership (See also **Grade or Class**)--CUBs 1450, 1459-60-61 (1450), 1514 (85), 1530, 1584, 1606, 1609.Procedure--CUBs 1450, 1609.**VIOLENCE**--CUBs 1532 (1386).**VOLUNTARY LEAVING**--CUBs 1532 (viz.), 1542, 1584.**WORKING CONDITIONS**-(See also **Conditions of Employment**)--CUBs 1447-8, 1514 (85), 1533.**VII. MISCONDUCT** (Sec. 60(1))**ABSENCE.****DISQUALIFICATION DURATION**--CUB 1569.**EXTENUATING CIRCUMSTANCES** (See **Disqualification**).**INEFFICIENCY.****INSUBORDINATION**--CUBs 1464 (159), 1544, 1569.**INTOXICANTS.****LABOUR DISPUTE, MISCONDUCT IN CONNECTION WITH**--CUB 1446 (891).**OFFENCES.**Criminal--CUB 1482.Industrial--CUBs 1464 (159), 1569.**PROOF**--CUBs 1464, 1482, 1569.**RELATIONS WITH OTHERS.**Supervisors--CUBs 1464, 1482, 1544, 1569.Fellow workers--CUB 1482.Public.Union.**RULES NOT FOLLOWED**--CUB 1569.**THEFT** (See **Offences**, Criminal).**UNION ACTIVITIES** (Sec. 60(2))--CUBs 1446 (891), 1569.**VOLUNTARY LEAVING ALTERNATIVELY** (See **VOLUNTARY LEAVING**--Misconduct alternatively and tantamount to Voluntary Leaving)--CUB 1544. .

VIII. SUITABLE EMPLOYMENT (Sections 59 & 54(2)b)

AVAILABILITY.

Disqualification only for refusal--CUBs 1480, 1497, 1512, 1576, 1582, 1594.

Joint disqualification--CUBs 1468, 1485, 1506, 1529, 1540, 1545, 1559, 1579, 1583, 1587, 1597.

Disqualified instead as Not available--CUBs 1477, 1480, 1481, 1489, 1492, 1529.

Unable to find Suitable employment, see **Unable**.

CAPABILITY RESTRICTED, see **Suitability**.

CHANGE FROM USUAL EMPLOYMENT AS REGARDS

Area--CUBs 1485, 1511, 1529, 1559, 1594.

Conditions (See also **Conditions**)--CUBs 1530, 1532, 1540, 1576.

Occupation--CUBs 1480, 1559, 1576, 1579 (1350), 1583 (1350), 1597.

Wage Rate--CUBs 1485, 1497, 1545, 1576, 1579, 1582, 1583.

CONDITIONS OF EMPLOYMENT (See also **Change**).

Advancement opportunity--

Casual work--

Contract of Service--CUB 1530.

Dangerous work--CUB 1532.

Eating facilities--CUB 1497.

Equipment.

Experience--CUBs 1576 (1350), 1579 (1350), 1583 (1350).

Fellow employees.

Health (See also under **Suitability**).

Hours and days of work--CUBs 1512 (961), 1576.

Housing.

Irregular employment (short-time).

Living conditions--CUB 1485.

Overtime--CUB 1540.

Part-time--CUBs 1477 (594 & 1171), 1587 (782, 486 & 1290).

Piece-work--CUBs 1579, 1583.

Seasonal--CUB 1506.

Shift work--CUBs 1468, 1512 (961), 1576.

Skilled work--CUB 1576.

Temporary--CUB 1477.

Transportation facilities--CUBs 1468, 1485, 1497, 1512 (961), 1559, 1594.

Travel distance--CUB 1540.

Trial employment offered (See **Trial**).

Wages--CUBs 1485, 1497, 1506, 1579 (1350), 1583 (1350).

Working conditions other than above.

DISQUALIFICATION DURATION (See also **Availability** and **Voluntary Leaving** herein)--CUB 1594.

DISTANCE TO WORK, see **Conditions**--Transportation & Travel.

DOMESTIC CIRCUMSTANCES (See also **Personal Circumstances** and **Suitability**)
CUBs 1489, 1540, 1559, 1576 (935, 887, 961 & 1113).

DURATION OF UNEMPLOYMENT

Brief—CUBs 1506, 1587 (782, 486, 1290).

Long—CUBs 1468, 1497, 1512 (1184), 1540, 1559, 1575 (1152A, 1468, 1113), 1576 (887), 961, (1113), 1579, 1583, 1594, 1597.

EMPLOYMENT MARKET—(Local or General) (See also **Prospects**)—CUBs 1468, 1512 (961), 1594.

EXTENUATING CIRCUMSTANCES, see **Disqualification Duration**.

FAILURE TO APPLY (Sec. 59)—CUB 1529.

GOOD CAUSE—SHOWN—CUBs 1477, 1529, 1530, 1540, 1545, 1587 (782 & 486).

—**NOT SHOWN**—CUBs 1468, 1480, 1485, 1489, 1497, 1506, 1512 (1184 & 961), 1575 (935, 887, 961 & 1113), 1576 (935 & 1350), 1579 (1350), 1582, 1583, 1594, 1597.

LABOUR DISPUTE INVOLVED—CUB 1532.

NEGLECT TO APPLY (Sec. 59).

OCCUPATION, see **Change from Usual**.

OFFER OF EMPLOYMENT—CUB 1511.

PERSONAL CIRCUMSTANCES (See also **Domestic Circumstances Studies & Suitability**)—CUBs 1477, 1506.

PREVAILING CONDITIONS—CUBs 1575, 1576, 1579, 1582, 1583.

PREVIOUS OFFER NOT ACCEPTED EITHER—CUBs 1468, 1480.

PROOF—CUBs 1511, 1529, 1540, 1582, 1597.

PROSPECTS OF OTHER WORK OR OF RETURN TO FORMER—CUBs 1468, 1506, 1511, 1512, 1540, 1545, 1559, 1582, 1587 (782 & 486).

REASONABLE INTERVAL—CUBs 1575 (1113, 1152A, 1468), 1576 (1152A, 1468), 1579, 1583.

REFUSAL (Sec. 59)—CUBs 1530, 1532.

STUDIES (See also **AVAILABILITY—Students**)—CUB 1511.

SUITABILITY OF OFFER (Subjective and peculiar to claimant).

Age—CUB 1594.

Capability—CUB 1597.

Disability physical or mental.

Health—CUBs 1497, 1506, 1545.

Pregnancy—CUBs 1497, 1522, 1582.

TRANSPORTATION, see **Conditions**.

TRAVEL, see **Conditions**.

TRIAL PERIOD—CUBs 1579 (1350), 1582, 1583, 1594, 1597.

UNABLE TO OBTAIN (Sec. 54(2)b)—CUB 1511.

UNEMPLOYMENT, see **Duration**.

UNION

Relations (Sec. 61)—CUBs 1530, 1532.

Rules—CUBs 1530, 1532.

VOLUNTARILY LEFT LAST PREVIOUS EMPLOYMENT ALSO

Subjective Reasons—CUBs 1468, 1477, 1480, 1489, 1497, 1529, 1575, 1579, 1587, 1597.

Employment had been felt unsuitable—CUBs 1497, 1582.

Delayed claim for benefit for 6 weeks—CUBs 1468, 1480.

Disqualification imposed for Voluntary Leaving—CUBs 1587.

For same reasons as present offer—CUBs 1468, 1582.

WORKING CONDITIONS, see Conditions.**IX. UNEMPLOYED (Sections 54(1) & 57 & Reg. 158)****APPRENTICESHIP**—CUB 1467A (1231).**AVAILABILITY FOR FULL TIME WORK DESPITE EMPLOYMENT** (Reg. 158(4))

—CUBs 1455, 1463, 1467A, 1476A, 1479, 1488, 1500, 1501, 1503, 1515, 1524, 1527, 1534, 1537, 1543, 1550, 1551, 1560, 1565, 1566 (1439, 1543), 1568, 1571 (1566, 265, 705), 1600, 1601, 1604, 1605.

CONTRACT OF SERVICE (See also **Apprenticeship & Employed**)—CUBs 1445, 1458 (1443, 246), 1488, 1543, 1561 (1443), 1564 (1443, 1445), 1581 (1443), 1590 (1443, 1458, 1461, 1464 & 1581), 1604, 1605.**COURSE OF INSTRUCTION** (Sec. 57(3)) (See also **AVAILABILITY**).**DISQUALIFICATION** (See also **Retroactive**)—CUBs 1445, 1565.**EARNINGS** (See **EARNINGS & Usual REMUNERATION**)—CUBs 1486 (1404), 1543, 1545 (1543), 1566 (1032, 1052), 1588, 1592, 1595, 1604, 1605.**EMPLOYED**—CUBs 1486 (1404), 1488, 1515 (1486), 1534, 1543.**ENGAGED ON OWN ACCOUNT** (Reg. 158(3))—CUBs 1455, 1463, 1467A, 1479, 1488, 1500, 1501, 1503, 1524, 1525A, 1527, 1534, 1537, 1543, 1550, 1551, 1565, 1566 (1543, 1032, 1052), 1568, 1571 (1566, 265 & 705), 1588, 1595, 1600.**FAMILY ENTERPRISE**—CUBs 1444, 1463, 1467A, 1479, 1486 (1404), 1515 (1486), 1525A, 1527, 1543, 1550, 1551, 1560, 1566 (1439), 1568, 1595.**FARMERS**—CUBs 1455, 1463, 1500, 1501, 1503, 1525A, 1527, 1534, 1550, 1551, 1560, 1565, 1568, 1600.**FULL TIME WORK, see Availability** above.**FULL WORKING WEEK**

Hours, shifts, etc. (Reg. 158(1))—CUBs 1486 (1403 & 1212), 1515, 1592, 1595, 1604, 1605.

Part-time—CUBs 1476, 1515, 1524, 1595.

Usual remuneration (Reg. 158(2)) See **Usual Remuneration and EARNINGS**.

HOLIDAYS (Sec. 57(2)b) & Reg. 159).

General continuous—CUBs 1604, 1605.

Single holiday.

Day before and/or after holiday.

LEAVE

Compensatory (overtime)—CUBs 1458 (1443, 246), 1561 (1443, 1445), 1564 (1443, 1445), 1581 (1443), 1590 (1443, 1458, 1461, 1464 & 1581).

Seasonal (See also **AVAILABILITY, Restricted duration & seasons**)—CUBs 1527, 1561 (1443, 1445), 1564 (1443, 1445), 1581 (1443), 1604, 1605.

OFF-SEASON UNEMPLOYMENT (See also **Farmers and Leave Seasonal**)—CUBs 1455, 1503, 1534, 1550, 1551, 1561 (1443, 1445), 1564 (1443, 1445), 1565, 1568, 1571, 1581 (1443).

PROOF—CUBs 1444, 1463, 1467A, 1486 (1403), 1488, 1500, 1501, 1515, 1524, 1525A, 1534, 1537, 1543, 1550, 1551, 1565, 1566 (1032, 1052, 1392, 1537, 1543), 1568, 1571, 1588, 1592, 1595, 1600, 1601, 1604, 1605.

RELIEF OF NEEDY (Reg. 157).

RETIREMENT LEAVE—CUB 1451.

RETROACTIVE DISQUALIFICATION—CUBs 1479, 1501, 1515, 1566, 1568.

SEASON, see **Leave and Off-Season**.

SELF-EMPLOYED, see **Engaged on Own Account**.

SUBSIDIARY (See also **Availability** above)—CUBs 1479, 1524, 1537, 1566 (1439), 1571 (1566), 1592.

SUITABLE EMPLOYMENT REFUSED—CUBs 1479, 1515.

SUNDAY (Sec. 57(2)a) & Reg. 154).

UNEMPLOYABLE, see **CAPABLE OF WORK**.

USUAL REMUNERATION (See also **Full Working Week & Earnings**)—CUBs 1445 (1443), 1458 (246, 1443), 1467 (1231), 1561 (1443, 1445), 1564 (1443, 1445), 1581 (1443), 1590 (1443, 1458, 1461, 1464, 1581), 1604, 1605.

VOLUNTARILY LEFT PREVIOUS (See also **VOLUNTARY LEAVING, Change**)—CUBs 1455, 1486, 1488, 1500, 1515, 1527, 1534, 1537 (677), 1560, 1588, 1600.

X. VOLUNTARY LEAVING (Sec. 60(1))

APPLICATION FOR BENEFIT DEFERRED SIX WEEKS AFTER SEPARATION, see **AVAILABILITY** and **SUITABLE EMPLOYMENT**.

AVAILABILITY

Questionable (See also **Application for Benefit Deferred**)—CUBs 1452, 1456, 1490, 1508, 1577.

Disqualification as N.A. only—CUBs 1499 (930), 1502.

Joint disqualification—CUBs 1496, 1552 (885, 1001, 1030, 1084, 1100), 1577, 1599.

CAPABILITY FOR WORK, CAUSE FOR VOLUNTARY LEAVING.

Likely to report cause—CUBs 1456, 1464, 1599.

Pregnancy—CUBs 1465 (1221), 1499 (930), 1502.

Sickness benefit—CUB 1599.

CHANGE AS CAUSE OF VOLUNTARY LEAVING, IN

Occupation—CUBs 1486, 1496, 1474, 1507A, 1544.

Income—CUBs 1500, 1603.

Residence—CUBs 1457, 1474, 1486, 1507A, 1508, 1552 (885, 1001, 1030, 1084, 1100), 1575, 1577.

DEFINITION AND EXAMPLES—CUBs 1498 (639), 1532 (Viz.), 1572.

DISTANCE FROM WORK, see **Transportation & Travel**.

DOMESTIC CIRCUMSTANCES (See also **Personal**).

Marriage—CUBs 1456, 1457, 1508.

Temporary—CUBs 1504, 1577.

Continuing—CUBs 1471, 1575.

DISQUALIFICATION PERIOD (See also **Duration & Retroactive**)—CUB 1498 (639).

DURATION OF DISQUALIFICATION (See also **Extenuating Circumstances**)—CUBs 1466, 1470, 1471, 1496, 1498 (639), 1500 (146), 1504, 1507A, 1532, 1572, 1575.

EXTENUATING CIRCUMSTANCES (See also **Duration**)—CUBs 1466, 1470, 1471, 1504, 1507A, 1572, 1574, 1575, 1603 (1575).

GRIEVANCES (See also **Working Conditions**).

Raised with employer—CUBs 1466, 1498 (639), 1500, 1523, 1532 (Viz.), 1544, 1572, 1596.

Raised with union, CUBs 1532 (Viz.), 1544.

Not raised—CUBs 1490, 1523, 1574.

HASTE—CUBs 1470, 1496, 1532 (259, 422, 429, 498, 698, 816, 847, 885, 946, 1101, 1030, 1086, 1100 & 1255), 1544, 1575.

JUST CAUSE.

Not shown—CUBs 1457, 1466, 1470, 1471, 1490, 1496, 1498 (639), 1500, 1504, 1507A, 1523, 1532 (201, 422, 429, 698, 727, 755, 964), 1544, 1552 (885, 1001, 1030, 1084 & 1100), 1572 (1187), 1575, 1599, 1603 (1575).

Shown—CUBs 1456, 1464 (159), 1508, 1523, 1577.

LABOUR DISPUTE INVOLVED—CUBs 1532, 1542.

MARRIED WOMEN LEAVING THE AREA (See also **Domestic** and **CLAIMS MATTERS**)—CUB 1457.

MISCONDUCT ALTERNATIVELY—CUBs 1464, 1504, 1544.

PERSONAL CIRCUMSTANCES (Other than **Domestic Circumstances**, **Availability** or **Capability** for which see above)—CUBs 1464, 1466, 1474, 1507A, 1552 (1084), 1572 (1187).

PREGNANCY, see under **Capability**.

PROOF

General—CUBs 1523, 1532.

Onus on administration—CUBs 1464, 1574, 1596.

Onus on claimant—CUBs 1466, 1490, 1574, 1532 (Viz.), 1552, 1575, 1599, 1603 (1575).

PROSPECTS OF OTHER EMPLOYMENT

General—CUBs 1457, 1500, 1552 (885, 1001, 1030, 1084, 1100), 1577.

Investigated beforehand—CUBs 1470, 1572, 1507A.

Not investigated beforehand—CUBs 1490, 1498 (639), 1532 (259, 422, 429, 498, 698, 816, 847, 885, 946, 1101, 1030, 1086, 1100 & 1255), 1574, 1575, 1603 (1575).

RETIRED FROM FORMER EMPLOYMENT—CUB 1552.

RETROACTIVE DISQUALIFICATION—CUB 1452.

SICKNESS BENEFIT (Sec. 66) (See **Capability for Work** above and **CAPABLE**).

SUITABILITY OF EMPLOYMENT AS REASON (See also **Working Conditions** and **SUITABLE EMPLOYMENT—Voluntarily Left**)—CUBs 1456, 1490, 1498 (639), 1500, 1523, 1572 (1187), 1574, 1603.

TANTAMOUNT TO VOLUNTARY LEAVING—CUBs 1464 (159), 1498 (639), 1523, 1532 (Viz.), 1544, 1577, 1599.

TRANSPORTATION & TRAVEL AS CAUSE—CUBs 1457, 1464, 1575.

TRIAL PERIOD OF EMPLOYMENT BEFORE VOLUNTARY LEAVING (See also **Working Conditions**)—CUBs 1490, 1575.

UNION RELATIONSHIPS AND RULES—CUBs 1532, 1575, 1603 (1575).

WORKING CONDITIONS (See also **Grievances**, **Suitability of Employment & Transportation**)—CUBs 1456, 1470, 1471, 1490, 1504, 1523, 1532, (74, 124, 146, 201, 231, 263, 436, 649, 785, 816, 964, 1029, 1086, 1090, 1100, 1150, 1188, & 1490), 1544, 1572, (1187), 1574, 1575, 1596.

C. TEXT OF LEGISLATIVE PROVISIONS CITED IN DIGESTED DECISIONS

I. The Unemployment Insurance Act.

Unless otherwise indicated, references in the Digest to Sections of the Act shall mean the Act enacted in 3-4 Elizabeth II (1955) Chapter 50, effective October 2nd 1955.

II. The Unemployment Insurance Regulations.

Unless otherwise indicated, references in the Digest to Sections of the Regulations shall mean the Regulations made by the Unemployment Insurance Commission on September 26th 1955 and approved by Order in Council P.C. 1955-1491, September 29th 1955, effective October 2nd 1955.

THE UNEMPLOYMENT INSURANCE ACT (1955)

2. In this Act,

- (j) "labour dispute" means any dispute between employers and employees, or between employees and employees, that is connected with the employment or non-employment, or the terms or conditions of employment, of any persons;

THE UNEMPLOYMENT INSURANCE ACT

*Section 29(1) of the Revised Statutes of Canada,
1952, Chapter 273.*

29. (1) Every person who, being insured under this Act, proves that he is

- (a) unemployed,
- (b) capable of and available for work, and
- (c) unable to obtain suitable employment,

and in whose case the conditions laid down by this Act are fulfilled, is, subject to the provisions of this Act, entitled to receive payments (in this Act referred to as "insurance benefit" or "benefit") at weekly or other prescribed intervals at such rates as are authorized by section 33, so long as those conditions continue to be fulfilled and so long as he is not disqualified under this Act from the receipt of benefit.

THE UNEMPLOYMENT INSURANCE ACT (1955)

How
Benefit Period
established.

45. (1) A benefit period in respect of an insured person is established when, upon making a claim for benefit, he proves

- (a) that within the period of one hundred and four weeks immediately preceding the most recent Sunday before the day on which he makes the claim he had had at least thirty contribution weeks, and
- (b) that at least eight of the contribution weeks referred to in paragraph (a) were
 - (i) in the period of fifty-two weeks immediately preceding the most recent Sunday before the day on which he makes the claim, or
 - (ii) in the period since the commencement of the immediately preceding benefit period, if any,

whichever is the shorter period.

Subsequent
benefit
period
within 104
weeks.
Rep. and New,
1956, c. 50, s. 2.

(2) If an insured person, within the period specified in paragraph (a) of subsection (1), had established a previous benefit period, then the subsequent benefit period is not established unless he proves that at least twenty-four of the contribution weeks referred to in the said paragraph (a) were

- (a) in the period of fifty-two weeks immediately preceding the most recent Sunday before the day on which he makes the claim, or
- (b) in the period since the commencement of the immediately preceding benefit period,

whichever is the longer period.

Extension
of
qualification
periods.

(3) Where an insured person proves in the manner prescribed by regulations of the Commission that during any period mentioned in subsection (1) or (2) contributions were not payable in respect of him for the reason that he was for any time

- (a) incapacitated for work by reason of some specific disease or bodily or mental disablement,
- (b) employed in employment that was not insurable,
- (c) employed in insurable employment in respect of which contributions were not payable, or
- (d) not working by reason of a stoppage of work owing to a labour dispute at the place of his employment,

that period shall, for the purposes of this section and sections 47 and 48, be increased by the aggregate of any such time.

Idem.

(4) Where an insured person proves in the manner prescribed by regulations of the Commission that during any increase to a period mentioned in subsection (3) contributions were not payable in respect of him for any of the reasons specified in subsection (3), that period shall, for the purposes of this section and sections 47 and 48, be further increased by the aggregate of those times during which contributions were not payable.

(5) For the purposes of subsections (3) and (4), the time during which contributions were not payable does not include any time during which the insured person was in receipt of benefit or seasonal benefit. Benefit periods excluded.

(6) The aggregate of any period and the total increases made to that period under this section shall not exceed two hundred and eight weeks. Limitation.

(7) In computing the number of contribution weeks and the average of weekly contributions for any purpose under this Act, a contribution week during which the earnings of an insured person were less than nine dollars shall be counted as one-half. Certain contribution weeks to count half.

46. (1) Subject to this section, a benefit period in respect of an insured person is a period of fifty-two weeks commencing with and including the week in which the benefit period was established. Duration of benefit period.

(2) A benefit period does not commence until the previous benefit period, if any, has terminated, except that a benefit period may commence with and include a week during which benefit rights with respect to a previous benefit period are exhausted, and the benefits payable in respect of that week shall be allocated to those benefit periods. Commencement.

(3) Where an insured person makes a claim for benefit on a day later than the day he was first qualified to make the claim and shows good cause for the delay, the claim may, as prescribed by regulation of the Commission, be regarded as having been made on a day earlier than the day on which it was made. Antedate.

(4) Where a benefit period has been established in respect of an insured person but benefit is not payable or has not been paid in respect of that benefit period, the benefit period may, as prescribed by regulation of the Commission, be regarded as not having commenced. Cancellation.

(5) A benefit period is terminated Termination.

- (a) when the insured person exhausts his benefit rights with respect thereto prior to the time it would otherwise expire, or
- (b) under such circumstances as are prescribed by regulations made by the Commission.

Rates of Benefit

47. (1) Where the average of the weekly contributions of an insured person is within a range of average weekly contributions set out in column 1 of the Schedule to this subsection, the weekly rate of benefit for a benefit period established in respect of that person is the rate set out opposite to such range in column 2 of that Schedule if he has no dependant or in column 3 of that Schedule if he has a dependant. Rates of benefit.

SCHEDULE

Rates of Benefit

Range of Average Weekly Contributions	Weekly Rate of Benefit	
Column 1	Column 2	Column 3
Cents	Person Without Dependant	Person With Dependant
Less than 20	\$ 6.00	\$ 8.00
20 and under 27	9.00	12.00
27 and under 33	11.00	15.00
33 and under 39	13.00	18.00
39 and under 45	15.00	21.00
45 and under 50	17.00	24.00
50 and under 54	19.00	26.00
54 and under 58	21.00	28.00
58 to 60	23.00	30.00

Average
weekly
contri-
butions.

(2) For the purpose of this section the average of the weekly contributions of an insured person is the average of the contributions paid on his behalf under paragraph (a) of subsection (1) of section 37 for the most recent thirty contribution weeks during the one hundred and four weeks immediately before the commencement of the benefit period.

Dependant.

(3) For the purposes of this section,

(a) a person with a dependant is

- (i) a man whose wife is being maintained wholly or mainly by him,
- (ii) a married woman who has a husband dependent on her,
- (iii) a person who maintains wholly or mainly one or more children under the age of sixteen years, and
- (iv) a person who maintains a self-contained domestic establishment and supports therein, wholly or mainly, a person connected with him by blood relationship, marriage or adoption;

(b) a child means a child of the insured person and includes his stepchild, adopted child or illegitimate child; and

(c) a person who does not reside in Canada is not a dependant, except as otherwise prescribed by regulations made by the Commission.

Seasonal Benefits

49. Seasonal benefits are payable as provided in this Act in respect of a seasonal benefit period established in respect of an insured person who does not meet the requirements of subsection (1) of section 45. Seasonal benefit period.

50. A seasonal benefit period in respect of an insured person is established when, upon making a claim for benefit on or after the 1st day of December but before the 15th day of April next following, he proves that he is How established.

- (a) a person who had at least fifteen contribution weeks subsequent to the most recent Saturday preceding the 31st day of March immediately before the day on which he makes the claim, or
- (b) a person whose most recent benefit period terminated after the 15th day of April immediately preceding the day on which he makes the claim, and who has complied with such other conditions as are prescribed by regulations made by the Commission with the approval of the Governor in Council.

51. (1) A seasonal benefit period in respect of an insured person who makes his claim on or after the 1st day of December but before the 1st day of January next following, is the period commencing with and including the week in which such 1st day of January falls, and ending with and including the week in which the 15th day of April next following falls. Duration of period.

(2) A seasonal benefit period in respect of an insured person who makes his claim on or after the 1st day of January is the period commencing with and including the week in which the seasonal benefit period in relation to him was established and ending with and including the week in which the 15th day of April next following falls. Idem.

52. Not more than one seasonal benefit period may be established in respect of an insured person during the period commencing on the 1st day of December and ending on the 15th day of April next following. Only one period between Dec. 1st and April 15th.

53. (1) Subject to this section, all the provisions of this Act respecting benefit periods and benefits apply in respect of seasonal benefit periods and seasonal benefits respectively, except section 44, subsections (1), (3), (4), (5) and (6) of section 45, subsection (1) of section 46, subsection (2) of section 47, section 48, paragraph (b) of section 50, and section 121. Application of Act.

Payment of Benefit

54. (1) Subject to this Act, where an insured person in respect of whom a benefit period has been established proves that he was unemployed during any week in the benefit period he is entitled to be paid benefit in respect of his unemployment during that week at the weekly rate applicable to him under section 47. Conditions of benefit.

Disquali-
fication.

- (2) An insured person is disqualified from receiving benefit in respect of every day for which he fails to prove that he was
- (a) capable of and available for work, and
 - (b) unable to obtain suitable employment.

Waiting
period.

55. (1) Except as otherwise prescribed by regulation of the Commission, an insured person is not entitled to receive benefit in respect of a benefit period until the expiration of a waiting period commencing with the day on which the benefit period was established and ending on the day that, but for this section, benefits in respect of that benefit period equal to the weekly benefit rate would have accrued.

Deductions.

- 56.** There shall be deducted from the weekly benefit of an insured person the amount of his weekly earnings in excess of the amount set out in column 3 of the Schedule to this section opposite
- (a) his weekly benefit rate in column 1, of that Schedule, if he has no dependant, or
 - (b) his weekly benefit rate in column 2 of that Schedule, if he has a dependant.

SCHEDULE

Weekly Benefits		Earnings not deducted
Column 1	Column 2	Column 3
\$ 6.00	\$ 8.00	\$ 2.00
9.00	12.00	3.00
11.00	15.00	4.00
13.00	18.00	5.00
15.00	21.00	6.00
17.00	24.00	7.00
19.00	26.00	9.00
21.00	28.00	11.00
23.00	30.00	13.00

Unemploy-
ment.

57. (1) For the purposes of this Act, a person is unemployed during a week if he does not work a full working week.

Not unem-
ployed.

- (2) No person is unemployed during a week by reason only that he does not work
- (a) on a Sunday, unless the Commission by regulation otherwise prescribes;
 - (b) on a holiday or non-working day for his grade, class or shift in the occupation or at the factory, workshop or other premises at which he is employed, unless otherwise prescribed by regulations made by the Commission; or
 - (c) on any day of a week during which he works the full working week.

(3) An insured person is unemployed and available for work within the meaning of this Act during any period he is attending a course of instruction or training that the Commission has directed him to attend or during such other period in such circumstances as are prescribed by regulations of the Commission. Unemployed.

Disqualifications

59. (1) An insured person is disqualified from receiving benefit if he has without good cause, Disqualifications for neglecting, etc., employment opportunities.

- (a) after becoming aware that a situation in suitable employment is vacant or about to become vacant, refused or failed to apply for such situation or failed to accept such situation when offered to him;
- (b) neglected to avail himself of an opportunity of suitable employment;
- (c) failed to carry out any written direction given to him by an officer of the Commission with a view to assisting him to find suitable employment, being a direction that was reasonable having regard both to his circumstances and to the usual means of obtaining that employment; or
- (d) failed to attend a course of instruction or training that the Commission directed him to attend for the purpose of becoming or keeping fit for entry into or return to employment.

(2) For the purposes of this section, but subject to subsection (3), employment is not suitable employment for a claimant if it is Employment not suitable.

- (a) employment arising in consequence of a stoppage of work attributable to a labour dispute;
- (b) employment in his usual occupation either at a lower rate of earnings or on conditions less favourable than those observed by agreement between employers and employees, or in the absence of any such agreement, than those recognized by good employers; or
- (c) employment of a kind other than employment in his usual occupation either at a lower rate of earnings or on conditions less favourable than those that he might reasonably expect to obtain, having regard to those that he habitually obtained in his usual occupation, or would have obtained had he continued to be so employed.

(3) After a lapse of a reasonable interval from the date on which an insured person becomes unemployed, paragraph (c) of subsection (2) does not apply to the employment described therein if it is employment at a rate of earnings not lower and on conditions not less favourable than those observed by agreement between employees and employers or, in the absence of any such agreement, than those recognized by good employers. Suitable employment.

60. (1) An insured person is disqualified from receiving benefit if he lost his employment by reason of his own misconduct or if he voluntarily left his employment without just cause. Loss of employment through misconduct.

Definition.

(2) For the purposes of this section, loss of employment by reason of misconduct does not include loss of employment on account of membership in, or lawful activity connected with any association, organization or union of workers.

Exception.

61. Notwithstanding anything in this Act, no insured person is disqualified from receiving benefit by reason only of his leaving or refusing to accept employment if by remaining in or accepting the employment he would lose the right

- (a) to become a member of,
- (b) to continue to be a member and to observe the lawful rules of, or
- (c) to refrain from becoming a member of

any association, organization or union of workers.

Period of disqualification.

62. Where an insured person is disqualified from receiving benefit under section 59 or 60, the period of disqualification shall be for such period, not exceeding six weeks, as is determined by the insurance officer, board of referees or umpire.

Work stoppage.

63. (1) An insured person who has lost his employment by reason of a stoppage of work attributable to a labour dispute at the factory, workshop or other premises at which he was employed, is disqualified from receiving benefit until

- (a) the termination of the stoppage of work,
- (b) he becomes *bona fide* employed elsewhere in the occupation that he usually follows, or
- (c) he has become regularly engaged in some other occupation, whichever event first occurs.

Exception.

(2) An insured person is not disqualified under this section if he proves that

- (a) he is not participating in, or financing or directly interested in the labour dispute that caused the stoppage of work, and
- (b) he does not belong to a grade or class of workers that, immediately before the commencement of the stoppage, included members who were employed at the premises at which the stoppage is taking place and are participating in, financing or directly interested in the dispute.

Separate businesses.

(3) Where separate branches of work that are commonly carried on as separate businesses in separate premises are carried on in separate departments on the same premises, each department shall, for the purpose of this section, be deemed to be a separate factory or workshop.

False statement.

65. Where an insurance officer becomes aware of facts that in his opinion establish that an insured person or any person on his behalf has, for the purpose of obtaining benefit under this Act, made a false statement or misrepresentation, the insurance officer may declare the insured person to be disqualified from

receiving benefits after such day as the insurance officer may determine, in such amount as the insurance officer may fix but not exceeding six times the insured person's weekly rate of benefit, and the amount so fixed shall be deducted

- (a) from the first benefits otherwise payable to the insured person after such day, and
- (b) from the maximum benefits prescribed by section 48 or 53, as the case may be.

66. No person who has become entitled to receive benefit ^{Illness.} and subsequently, while he otherwise continues to be so entitled, becomes incapable of work by reason of illness, injury or quarantine, is disqualified from receiving benefit by reason only of such illness, injury or quarantine, but an insured person who has lost his employment or has ceased to work by reason of illness, injury or quarantine is disqualified from receiving benefit for the duration of the illness, injury or quarantine.

Regulations

67. (1) The Commission may, with the approval of the ^{Regulations.} Governor in Council, make regulations,

- (a) providing for the payment of benefit to any person or agency on behalf of deceased or incapacitated persons or persons of unsound mind;
- (b) for taking into account in determining benefit rights, contributions erroneously paid;
- (c) imposing additional conditions and terms with respect to contributions and the payment thereof and with respect to the receipt of benefit, restricting the amount or period of benefit and making modifications in the provisions of this Act relating to the determination of claims for benefit, in relation to persons
 - * (i) who habitually work for less than a full working week,
 - (ii) who work or have worked for only part of a year in an industry or occupation that the Commission declares to be seasonal,
 - (iii) who by custom of their occupation, trade or industry or pursuant to their agreement with an employer are paid, in whole or in part, by the piece or on a basis other than time, or
 - (vi) who are married women.

(2) Regulations made under paragraph (c) of subsection (1) ^{Scope of regulations.} shall be reported on by the Advisory Committee before they are made and may be applicable

- (a) either generally or in a specified area; and
- (b) to all classes to which paragraph (c) of subsection (1) applies or one or more of them, to a particular class or a portion of a class or to an industry or a portion of an industry.

Regulations.

- (3) The Commission may make regulations,
 - (a) for the ratification or writing-off of amounts paid to a person by way of benefit while he was not entitled thereto;
 - (b) for defining "adopted child" and the words and expressions in subparagraphs (i) to (iv) of paragraph (a) of subsection (3) of section 47;
 - * (c) for determining the beginning and the end of a stoppage of work; and
 - (d) for defining and determining what is a working week in any employment.

CLAIM PROCEDURE

Reference to Insurance Officer

Claims submitted to insurance officer.

68. All claims for benefit and all questions arising in connection therewith shall be submitted to an insurance officer.

How dealt with.

69. (1) An insurance officer shall consider any claim submitted to him under section 68 and

- (a) If he is of opinion that a benefit period has been established, he shall so declare, or
- (b) if he is of opinion that a benefit period has not been established, he shall
 - (i) declare that a benefit period has not been established on the ground that one or more of the requirements of this Act have not been complied with, or
 - (ii) refer the claim, if practicable within fourteen days from the day on which the claim was submitted to him, to the board of referees for its decision.

Disallowance of claim.

(2) Notwithstanding that a benefit period has been established, if the insurance officer is not satisfied that the claimant has fulfilled all the other conditions of qualification for benefit or if he is of the opinion that the claimant is disqualified from receiving benefit, he shall

- (a) declare the claimant to be disqualified from receiving benefit for such days as he may determine, on the ground that
 - (i) the claimant is disqualified under this Act, or
 - (ii) the claimant does not fulfil one or more of any of the conditions or requirements of this Act or the regulations, or
- (b) refer the claim, if practicable within fourteen days from the day on which the claim was submitted to him, to the board of referees for its decision.

Deduction for days of disqualification.

(3) Where a claimant has been declared disqualified under paragraph (a) of subsection (2) for any days, there shall be deducted from the benefits otherwise payable to him in respect of the week in which such days fall, an amount equal to one-sixth

of the product obtained by multiplying the total number of such days in the week by the weekly rate of benefit applicable to that person under section 47, but if the amount so calculated is not a multiple of one dollar, fractions of a dollar less than one-half shall be disregarded and fractions of a dollar equal to or greater than one-half shall be taken as a full dollar.

Appeal to Board of Referees

70. The claimant may at any time within thirty days from the day on which the decision of an insurance officer is communicated to him, or within such further time as the Commission may in any particular case for special reasons allow, appeal to the board of referees in the manner prescribed by regulations of the Commission. Appeal to board of referees.

71. A decision of a board of referees shall be recorded in writing and shall include a statement of the findings of the board on questions of fact material to the decision. Decision.

Appeal to Umpire

72. An appeal lies to the umpire in the manner prescribed by regulations of the Commission from any decision of a board of referees as follows: Appeal to umpire.

- (a) at the instance of an insurance officer, in any case;
- (b) at the instance of an association of workers of which the claimant is a member, in any case; or
- (c) at the instance of the claimant
 - (i) without leave in any case in which the decision of the board of referees is not unanimous, and
 - (ii) with the leave of the chairman of the board of referees in any other case.

73. (1) An application for leave to appeal from a decision of board of referees may be made by the claimant in such form, and within such time not less than thirty days after the day the decision is communicated to him, as is prescribed in regulations made by the Commission, and an application for leave to appeal shall be granted by the chairman if it appears to him that there is a principle of importance involved in the case or there are other special circumstances by reason of which leave to appeal ought to be granted. Leave to appeal.

(2) Where the chairman of a board of referees grants leave to appeal to the umpire from the decision of the board, the chairman shall include in the record a statement of the grounds on which leave to appeal is granted. Grounds of appeal.

74. For the purposes of paragraph (b) of section 72 a claimant for benefit is not, in relation to any appeal, a member of any association of workers unless he was a member thereof on the last day on which he was employed before the claim that is the When person member of association.

subject of the appeal was made, and has continued to be a member thereof until the day when the appeal is made; and the question whether an association is or is not an association of workers for the purposes of this section shall be decided by the umpire.

Time for
appeal.

75. An Appeal from a decision of a board of referees must be brought within sixty days of the day the decision is communicated to the claimant or such longer period as the umpire may in any case for special reasons allow.

Recon-
sideration.

76. On an appeal from a decision of a board of referees the umpire may direct the board of referees to reconsider or rehear the case either generally or on any particular issue, and may withhold his decision pending the decision of the board of referees.

Umpire
decision
final.

77. The decision of the umpire on an appeal from a decision of a board of referees is final and is not subject to appeal to or review by any court.

Attendance
of witnesses.

78. Where on an appeal to the umpire from a decision of a board of referees a person affected by the decision is requested by the umpire to attend before him on the consideration of the appeal and so attends, he shall be paid such travelling and other allowances, including compensation for loss of remunerative time, as are approved by the Treasury Board.

Amendment
of decision.

79. An insurance officer, a board of referees or the umpire may on new facts rescind or amend a decision given in any particular claim for benefit.

Payment
of benefit
pending
appeal.

80. (1) Where a claim for benefit is allowed by a board of referees, benefit is payable in accordance with the decision of the board notwithstanding that an appeal to the umpire is pending, and any benefit paid in pursuance of this section after the decision of the board of referees shall be treated, notwithstanding that the final determination of the question is adverse to the claimant, as having been duly paid, and is not recoverable from the claimant.

Exception.

(2) Subsection (1) does not apply

(a) if the appeal was brought within twenty-one days of the day on which the decision of the board of referees was given and on the ground that the claimant ought to be disqualified under section 63, and

(b) in such other cases as the Commission by regulation prescribes.

THE UNEMPLOYMENT INSURANCE REGULATIONS 1955**APPLICATION FOR BENEFIT***General*

145. (1) Any insured person who desires to make a claim for benefit shall, in such manner as the Commission may from time to time direct, fulfil the conditions imposed by sections 146 to 148, which shall be deemed to be additional conditions for the receipt of benefit.

(2) Any failure to make a claim in the prescribed manner shall render the claimant liable to disqualification under subparagraph (ii) of paragraph (a) of subsection (2) of section 69 of the Act for so long as he fails to fulfil any such conditions.

(3) Any statement in material presented or in information provided pursuant to these regulations shall be made truthfully and without misrepresentation and accordingly may be accepted as true unless the contrary is proved.

(4) An officer of the Commission may, pursuant to general or specific directions of the Commission, in any particular case or in any class or group of cases, dispense with or vary the requirements of any of the provisions of sections 146 to 148, and in any such case the claimant shall furnish such evidence, or attend at a local office or other place, as may be required.

Initial and Renewal Claims

146. (1) Every claimant, except a postal claimant, who desires to make an initial or renewal claim for benefit shall, in the prescribed manner

- (a) attend at the local office and register for employment;
- (b) apply for benefit at the local office on such forms as the Commission may from time to time determine;
- (c) lodge, make arrangements to lodge or produce as and when directed his contribution records at the local office; and
- (d) furnish in the manner and at the time required such evidence as to the fulfilment of the conditions and the absence of disqualification for receiving benefit and for that purpose attend at such office or place as directed.

(2) For the purposes of these regulations,

- (a) "initial claim" means a claim made for the purpose of establishing a claimant's benefit period or seasonal benefit period; and
- (b) "renewal claim" means a claim made during the currency of a benefit period or seasonal benefit period after the claimant has failed to report on two or more consecutive claim-report days.

Continuing Claims

147. (1) Every claimant, except a postal claimant, who desires to make a continuing claim for benefit in the prescribed manner shall

- (a) attend at the local office at which he made his last initial or renewal claim for benefit or at such other place as may be permitted in his case and keep his application for employment alive;

- (b) produce his contribution records as and when directed; and
- (c) as proof of being unemployed, capable of and available for work and unable to obtain suitable employment, attend at such place on such claim-report day or days and at such time or times as an officer of the Commission may direct and furnish as may be required such other evidence as to fulfilment of the conditions and the absence of disqualification for receiving or continuing to receive benefit and for that purpose attend at such office or place as directed.

(2) For the purpose of these regulations, "continuing claim" means a claim of a continuing nature for the purpose of keeping in effect during the currency of a benefit period or seasonal benefit period an initial or renewal claim by the claimant reporting at specified intervals to prove entitlement to benefit.

BENEFIT PERIODS

Antedating

150. (1) Where a claimant makes application to have his claim made effective for a period preceding the date on which he actually made his claim, the application may be approved from the date for which he proves that

- (a) he fulfilled in all respects the conditions of entitlement to benefit and was in a position to furnish proof thereof; and
- (b) throughout the whole period between such date and the date he actually made his claim he had good cause for delay in making such claim and furnishing such proof.

(2) For the purposes of this section, such ante-date shall in no case be more than thirteen weeks from the week in which he made his claim for benefit, and such ante-date claim shall always commence with the Sunday of the week in which such ante-date falls.

Holidays and Non-Working Days

155. (1) Subject to subsection (2), whenever a person is unemployed during a week by reason only that he does not work at his place of employment on a general continuous holiday, such person shall be unemployed during the week within the meaning of section 54 of the Act.

(2) Whenever a person is unemployed during a week by reason only that he does not work on a single holiday or on the working day immediately before or after such holiday or on any combination thereof, by reason of such holiday, such person shall not be unemployed during that week.

Unemployed during Farming Off-Season

156. A claimant who is employed on his own account in the operation of a farm, shall be unemployed in respect of his farming operations during any week in the period commencing with the week in which October 1st falls and ending with the week in which the 31st of March falls (hereinafter called the "farming off-season"), if he

- (a) proves in this respect that he did no work or the work performed by him during such week was so limited in extent that it did not prevent him from accepting full-time employment, and

- (b) that during the two complete off-seasons preceding the week in which he made his claim for benefit a total of at least thirty contribution weeks were recorded in respect of him.

Full Working Week

158. (1) "Full working week" means the number of hours, days or shifts that constitute the full week's work for any grade, class or shift in an occupation or at a factory, workshop or other premises at which the claimant is employed and, in the case of a claimant who is remunerated at a piece, mileage or other unit rate, the number of such units normally worked by persons so engaged.

(2) Any week for which the usual remuneration for a full working week is earned or paid shall be a full working week and in the case of any railway employee paid on a mileage basis, this shall mean any week in a month for which his earnings equal or exceed \$360.

(3) Subject to subsection (4), any week during which a person is engaged in business on his own account shall be a full working week.

(4) Any person, the nature of whose employment or self-employment is such that it would not prevent him from accepting full-time employment in a particular week, shall not be considered to have worked a full working week in that employment.

Additional Conditions Imposed upon Certain Married Women

161. (1) Before any married woman may receive benefit for any week within the period of 104 weeks commencing with the week following her marriage, she shall, as an additional condition to the receipt of benefit, prove that she has ten contribution weeks during that period, provided however, that if she was in employment at the time of her marriage, such contribution weeks must be subsequent to her first separation from such employment.

(2) She shall then be entitled to receive benefit in respect of the week in which she proves the fulfilment of the additional condition and in respect of any week thereafter, provided that she fulfils all other conditions of entitlement to benefit and is not otherwise disqualified.

(3) The additional condition need not be fulfilled, as from the week in which she proves the occurrence of any of the following events:

- (a) if she was unemployed at the time of her marriage, that her last separation from employment prior to her marriage, or if she was employed at the time of her marriage, that her first separation from employment after marriage, was in consequence of
 - (i) her employer's rule against retaining married women in his employ,
 - (ii) her discharge on account of shortage of work,
 - (iii) any other reason solely and directly connected with her employment, except misconduct or voluntarily leaving without just cause,
 - (iv) her incapacity for work due to illness, injury or quarantine, or

- (v) her leaving the area to establish residence in a location where there are reasonable opportunities for her to obtain suitable employment, or
- (b) that her husband has died, deserted her, or is permanently separated from her, or has become wholly incapacitated for work and that such incapacity has lasted for at least four consecutive weeks, and in the latter case proof of the occurrence of the event shall be deemed to have been fulfilled from the date of her claim for benefit but not prior to the commencement of the period of such incapacity.

(4) The additional condition need not be fulfilled while she works less than full time for the employer by whom she was employed at the time of her marriage and with whom she remained employed without interruption.

Suspension of Benefit Pending Appeal

167. Benefit shall not be payable in accordance with the decision of a Board of Referees where in the opinion of the Commission such decision has ignored the explicit provisions of the Act or Regulations, provided that an appeal to the umpire is brought on these grounds within twenty-one days of the day on which the decision of the Board of Referees is given.

Payment at the Dependency Rate

168. (1) For the purpose of carrying out the provisions of subsection (3) of section 47 of the Act.

- (a) "self-contained domestic establishment" means a dwelling house, apartment, room or other similar place in which, among other things, the dependant for whom the insured person claims, ordinarily has his residence, sleeps and has his meals or has his domicile;
- (b) "connected by blood relationship" refers only to the insured person's parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, uncles, aunts, nephews and nieces;
- (c) "connected by marriage" refers only to the parents, grandparents, great-grandparents, brothers and sisters of the insured person's spouse and his stepchildren;
- (d) "connection by adoption" refers only to adoption by process of law; and
- (e) "adopted child" refers to a child adopted in any manner.

Earnings for Purpose of Benefit

172. (1) The earnings to be taken into account for the purpose of determining the amount of benefit payable to an insured person are, saving the exceptions in subsection (2), all remuneration or income received or to be received in connection with services performed by such person, whether or not under a contract of service and, for the purpose of this section, shall include.

- (a) retirement leave credits;
- (b) wages in lieu of notice;
- (c) reserve army pay for attendance at camp for not more than two consecutive working days;

- (d) board and lodging;
 - (e) holiday pay provided for by subsection (4) of section 173;
 - (f) workmen's compensation paid in respect of total temporary disability; and
 - (g) monies paid in consideration of claimant's returning to or commencing work with, a specific employer.
- (2) The earnings of an insured person for the purpose of subsection (1) shall not include
- (a) bonuses or gratuities paid for past services;
 - (b) relief grants in cash or in kind;
 - (c) disability, military, old age, or retirement pension;
 - (d) workmen's compensation under a permanent settlement;
 - (e) payments under sickness and disability insurance plans;
 - (f) investment income;
 - (g) holiday pay other than that in paragraph (e) of subsection (1); or
 - (h) earnings less than \$1.00 in a week.

(3) The earnings of an insured person as provided in subsection (1) means in the case of an insured person who has been self-employed the net earnings after allowance for the cost of materials or equipment or other similar costs, if any, that have been incurred for the purpose of such earnings and in the case of all other insured persons it means the gross earnings.

(4) For the purpose of paragraph (d) of subsection (1) the value of board and lodging shall be computed according to the scale of values set out in subsection (2) of section 86.

(5) For the purpose of determining the amount of benefit payable to a claimant with respect to whom contributions for the period being claimed for had been recorded in advance, the amount of earnings to be taken into account shall be the lowest amount in the range represented by such contributions in the period of claim and where the total value of such contributions does not correspond exactly with the value of the weekly contributions set out under section 37 of the Act the nearest such value shall be taken.

Allocation of Earnings for Benefit Purposes

173. (1) Subject to subsection (3), the earnings of an insured person shall be allocated, for the purpose of determining the amount of benefit payable, to the period for which earned or paid.

(2) If the earnings are for a period that is monthly, semi-monthly or that otherwise does not coincide exactly with a claim week, such earnings shall be allocated to the days for which earned or paid in the particular claim week in the proportion that such days bear to the total pay period.

(3) Retirement leave credits shall be allocated on a *pro rata* basis to the week or weeks in the period in which received.

(4) Holiday pay and pay credits shall be allocated on a *pro rata* basis to the week or weeks in the holiday period but, in the case of a laid-off or separated employee, shall be taken into account as earnings and so allocated only if such period is, at the place where he was employed, a general continuous holiday which commences within six weeks after such separation or lay-off.

(5) Where a claimant works on a Saturday continuously through midnight into Sunday the earnings for such work shall be allocated to the week in which the Sunday falls if the time spent on such work after midnight is equal to or longer than the time worked before midnight and otherwise the earnings for such work shall be allocated to the week in which the Saturday falls.

(6) For the purposes of this section, fractions of a dollar equal to or greater than one-half shall be taken as a full dollar and lesser fractions disregarded.

ADJUDICATION AND APPEAL PROCEDURE

Insurance Officers' Powers

176. (1) The Commission may from time to time determine the procedure to be followed for the consideration and examination of benefit claims and questions to be considered by an insurance officer and, without limiting the generality of the foregoing, may also determine from time to time the claims and questions which any insurance officer shall examine.

(2) An insurance officer, before deciding any question arising in connection with a claim for benefit, may refer the question for investigation and report.

Constitution of Boards of Referees

177. (1) Boards of Referees shall be constituted by the Commission and each shall consist of a chairman appointed under subsection (2) of section 17 of the Act and one or more members of the employed persons' panel and an equal number of members from the employers' panel.

(2) A panel shall be composed of such persons as the Commission may from time to time choose for such period as it may stipulate and such membership may be terminated by the Commission at any time.

(3) As far as is practicable, members of a board, other than a chairman, shall be selected in rotation from each respective panel.

(4) No person shall be a member of a board during the consideration of a case.

- (a) in which he is or has been a representative of the claimant;
- (b) by which he is or may be directly affected; or
- (c) in which he has taken any part either on behalf of an association, or as an employer, or as a witness, or otherwise.

178. Any claim or question which is referred to a board or any appeal from a decision of an insurance officer may be proceeded with, despite the absence of members of the board, not exceeding half their number, provided that the chairman is present and the claimant or his representative consents to so proceeding.

Appeal to a Board

179. An appeal from a decision of an insurance officer shall be in writing, shall contain a statement of the grounds of the appeal, and shall be filed at the local office from which the claimant received notification of the insurance officer's decision.

Hearing

180. (1) A claimant may apply for a hearing where
- (a) his claim for benefit is referred to a board, within seven days from receipt of notice of the reference; or
 - (b) he appeals to a board of referees from a decision of an insurance officer, at the time of filing the appeal.
- (2) Application for a hearing shall be in writing and shall be filed with the local office at which the appeal is filed.
- (3) The chairman shall grant a hearing upon such application but if no such application has been made he may nevertheless direct that there shall be a hearing.
- (4) In no case shall a person be entitled to be paid for travelling or other allowances for the purpose of attending the hearing unless he is directed in writing by the chairman of the board to attend before the board.
- (5) The procedure on a hearing shall be determined by the chairman.

Referral for Investigation

181. Before deciding any question arising in connection with a claim for benefit, the chairman of a board, at any time prior to the board's decision, may refer the question for investigation and report.

Decision of a Board

182. (1) A board shall not decide a case until a reasonable opportunity has been given to the claimant to make any representations which he desires the board to consider in making its decision and, where he fails to do so, he shall be deemed to have had such reasonable opportunity.
- (2) Where any member of a board dissents from the decision of the board the reasons for his dissent shall be recorded in the report of the proceedings of the board.
- (3) As soon as a board has reached a decision the chairman shall file such decision with the insurance officer.
- (4) The claimant shall be notified in writing of the decision.

Leave to Appeal to the Umpire

183. (1) An application for leave to appeal to the Umpire under subsection (1) of section 73 of the Act shall be made within thirty days of the date on which the decision of the board is communicated to the claimant, or within such further time as the Commission may in any particular case for special reasons allow, and in such form and manner as the Commission may from time to time direct.
- (2) Within fifteen days after the receipt of any such application the chairman shall notify the insurance officer in writing of his decision and the insurance officer shall forthwith send written notice of such decision to the claimant.

Manner of Appeal to the Umpire

184. (1) An appeal to the Umpire from the decision of a board shall be filed in writing at the local office from which the claimant received notification of the decision of the board of referees.

(2) The insurance officer or any person or association having an immediate interest in the decision may, within ten days of the date on which an appeal is filed or within such further time as the Umpire may in any particular case for special reasons allow, file with such local office for submission to the umpire a statement of observations and representations for consideration by the umpire.

Question of Immediate Interest

185. The question as to whether any person or association has an immediate interest is one for the Umpire to decide.

Hearing by the Umpire

186. (1) Any person or association having an immediate interest in the decision may apply to the Umpire in writing for a hearing and the Umpire shall thereupon grant a hearing.

(2) An application to the Umpire for a hearing shall be filed at the local office at which the appeal is filed, within ten days of the date on which an appeal is filed or within such further time as the Umpire may in any particular case for special reasons allow.

(3) If no application has been made the Umpire may nevertheless direct that there shall be a hearing.

(4) In no case shall a person be entitled to be paid for travelling or other allowances for the purpose of attending the hearing unless he is requested by the Umpire to attend before him.

(5) In any case in which a hearing is to be held, such notice in writing of the date, time, and place of the hearing as the Umpire may direct shall be sent to such persons or associations as the Umpire may direct.

(6) The procedure on the hearing of an appeal shall be determined by the Umpire.

Decision of the Umpire

187. (1) The decision of the Umpire shall be in writing and under the seal of the Registrar of the Umpire, and the Registrar shall send a copy thereof to the claimant and any other person or association having an immediate interest in the decision.

(2) The Commission may publish the decision, or a digest thereof; if and as it deems expedient.

DIGEST
of
DECISIONS OF THE UMPIRE
in 1958
ON BENEFIT CLAIMS
under the
UNEMPLOYMENT INSURANCE ACT
(CUBs 1444 to 1609 inclusive)

SECOND OF TWO VOLUMES

VOLUME ONE

- Description and Use of Digest
- Part A—Legislative Index
- Part B—Subject Index
- Part C—Text of legislative provisions cited

VOLUME TWO

- Part D—Individual digested decisions

January 17th, 1958 (Affirmed)

CUB 1444

(French)

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present, examination of witnesses, unanimous—credibility, finding of fact, Evidence—benefit of doubt, credibility, documentary, employer information, enforcement officer finding, oath, statements before and after disqualification and after Board of Referees, Jurisdiction of adjudicating authority re aspect raised by adjudication, Question of fact).

CLAIMS MATTERS (Dependency).

UNEMPLOYED (Family enterprise, Proof).

Section 29(1)a) (R.S. 1952)

and

Section 54(1) of the Act

An officer of the Commission in the course of examining the books of a business belonging to the father of a claimant, reported that its register of salaries indicated that the claimant, who had been on claim at the dependency rate the last two winters, had worked there during four months of the first winter and one month of the last and had received \$160. a month in addition to his board, and that the income tax forms of both the claimant and the employer had been to the same effect. The claimant (in writing and under his signature) had then explained his failure to report his work and earnings to the local office on the grounds no unemployment insurance contributions had been paid in respect thereof. Upon disqualification as not unemployed, the claimant then denied having so worked.

At the hearing of the board of referees, the claimant denied his original signed admission and gave testimony, corroborated by his father, to the effect that it was the claimant's wife rather than the claimant who had worked and that she had done so during the entire year at the rate of \$60.00 per month, which earnings in their entirety had been paid to the claimant. On the basis of this testimony, the Board removed the disqualification, subject to the recovery of any excess benefit paid the claimant by reason of his rate of benefit being reduced from the dependency to the single rate.

The claimant's state of unemployment was held by the Umpire to be in the particular case, despite the strong element of doubt created by the contradictions between the statements for income tax and accounting purposes and those for benefit purposes, a question of fact and credibility. The board of referees which had the advantage of seeing and hearing the witnesses having decided unanimously in favour of the claimant, there was no basis for reasonably differing with this finding, in view of the complete absence of additional elements and the two sworn statements submitted by the claimant and his father to the Umpire. The claim, however, would have to be re-examined by the insurance officer with respect to the dependency rate.

Appeal of insurance officer dismissed.

January 17th, 1958 (Reversed)

CUB 1445

ADJUDICATION PROCEEDINGS (Disqualification procedure and revision, Interpretation).**EARNINGS** (Allocation, Reinstatement damages, Services performed, Usual remuneration).**UNEMPLOYED** (Contract of service, Disqualification (rescinded), Earnings, Usual remuneration).*Section 54(1) of the Act**and**Section 172(1) of the Regulations*

A commissioner, appointed under the provincial Labour Relations Act to enquire into the legality of dismissal of several employees including the claimant, ruled that the employer had violated that Act by such dismissals and that the employees should be rehired and also made whole in respect of the loss of pay suffered by them in the interval. The employees accordingly were paid compensation by the employer for the loss of wages (80% of wages lost, on basis of agreement with union by reason of employer being on verge of bankruptcy).

The insurance officer in the first instance imposed a disqualification under Section 54(1) as not unemployed but upon appeal to the board of referees, rescinded it and instead referred the matter to the Board as earnings under Regulation 172(1).

It was held that the moneys in question were not earnings as defined, for two reasons. The first was because no services were actually performed by the claimant at any time for such moneys. These moneys could only remotely be said, as distinguished from those paid in CUB 1443 in the form of compensatory leave for overtime work by a canalman, to be in connection with services performed in that services were at some time performed by the claimant for his employer under a contract of service. The claimant's counsel had contended the moneys were paid pursuant to a right arising under the provincial Act by reason of its breach by the employer and that wages had entered the issue only as a yardstick for settlement. The second reason was because moneys paid under the above circumstances are not specifically mentioned in any one of the paragraphs from (a) to (g) of Regulation 172(1), the wording of which leaves much to be desired as to precisely what its provisions were intended to include as earnings for the purpose of unemployment insurance benefit.

JURISPRUDENCE: CUB 1443 distinguished.

Followed in CUBS 1561 & 1564.

Appeal of claimant's union allowed.

January 18th, 1958 (Affirmed)

CUB 1446
(French)**LABOUR DISPUTE (Defined; Attributable to L.D., Conditions of employment, Existence of L.D., Proof; Stoppage of Work; Union Existence).****MISCONDUCT (Labour Dispute).***Sections 2(j), 63(1) and 60(1) of the Act*

The claimant who had been employed from January 21st to May 24th, 1957 as a shipping clerk, lost his employment when, according to the employer, he was dismissed because he would not comply with orders and was engaged in union activity. It appeared that a labour union had been recruiting members among the employees of the small company in question, in the course of which eight of these would have attended a meeting with a representative of the said union on or about May 22nd, discussed certain changes in their working conditions and signed membership cards. In the meantime, the employer noted a certain slowdown in production and on the basis of enquiries, concluded there was friction among his employees by reason of union activity. Accordingly, he dismissed, on May 24th, the eight employees who had become union members and at five o'clock that same day, 16 other employees; the night shift consisting of eight men, was also suspended indefinitely, there remaining on the job only three office workers, six truck drivers and five production employees. A union membership meeting was held the same day and a third meeting on the 28th, at which the members signed a statement pertaining to their dismissal which they handed in to two representatives of the provincial Labour Relations Board. On the 3rd of June the employer took back 11 of the employees, on the 5th, two more, and on June 10th, hired four new workers; the eight union members were not rehired.

Following disqualification under Section 63 of the Act, an appeal was taken to the board of referees at which the union representative pointed out it held no certificate of recognition as bargaining agent and there was no contract between the union and the employer and moreover, that the latter had been found by the Labour Relations Board to have illegally dismissed his employees for union activity.

It was held that a labour dispute existed within the meaning of Section 2(j) of the Act on the following grounds. The facts show there was insistence and resistance and accordingly a dispute, whether or not there were direct negotiations or contact between the said parties. Such dispute was between the employer and his employees, specially inasmuch as both parties acted without the medium of acknowledged agents or third parties. Thirdly, such dispute concerned the introduction of a union into the establishment of the said employer, his opposition constituting, as in CUB 751, clear proof that one of the conditions of employment he insisted on was that his employees not belong to a union, the existence of which in fact was apt to change noticeably the working conditions already in effect (CUB 1136).

The undeniably considerable work stoppage was thus not only an incident related to the dispute but an event which would not have taken place had there been no dispute, in fact, no dispute concerning the introduction of the union. Accordingly the situation described in Section 63(1) is established in evidence. On the other hand, as the claimant failed to prove under Section 63(2) that he was not directly involved and did not take part

in the dispute, the evidence rather established that he did take part and his working conditions would be likely to change as a result of the introduction of the union into the employer's establishment. Therefore a disqualification under Section 63 rightly applied.

With respect to the dissent of a member of the board of referees on the grounds it was rather a matter of industrial misconduct, the provisions of the Act concerning industrial misconduct, as pointed out in CUB 891, do not apply in the case of loss of employment attributable to the activity, justified or not, of an employee during a labour dispute, and such loss of employment must be considered solely and exclusively under Section 63 of the Act.

JURISPRUDENCE: CUBs 751, 1136 & 891 followed.

Referred to in CUB 1627 and applied in CUB 1682.

Appeal of claimant's union dismissed.

**January 17th, 1958 (Affirmed)
(Reversed)**

**CUB 1447
1448
(French)**

ADJUDICATION PROCEEDINGS (Board of Referees, familiar with local situation, finding of fact, unanimous, Evidence—irrelevant to decision, Interpretation, Umpire—decision).

LABOUR DISPUTE (Conditions of employment, Existence of L.D., Incidents, Insistence and resistance, Merits irrelevant, Proof, Shortage of work, Stoppage of work, Union existence).

Section 63 of the Act

The claimant lost his employment as a bus driver following a strike, the employer stating as the reason in CUB 1448, a shortage of work.

Following disqualification under Section 63, a test case was appealed locally and unanimously dismissed by the board of referees (CUB 1447). The appeal of several other claimants who had moved to another city was upheld unanimously by a different board of referees (CUB 1448).

The dispute first started with the attempt of a certain number of employees to form a union at the employer's premises; during February 1957, the union submitted to the Quebec Labour Relations Board a request that the union be recognized for the purpose of representing all the employees of the given employer, except office and restaurant employees and those representing an aspect of management. The dispute was continued by the employer's release of three employees on account of union activities and by the representations made on February 26th, on their behalf by the union organizer. On March 1st, the employees, already members of the union (72 out of the 115), held a meeting at which they decided not to return to work until the employer agreed to rehire the three released members, to treat union members on the same basis as the other employees, to recognize the union and to deal with it. The employer showed his resistance to such insistence by laying off these employees and attempting on March 10th and 14th, to resume his operations. On March 17th, the employer released all the remaining employees on account of shortage of work.

While the mere fact of a work stoppage did not in itself prove the existence of a labour dispute, it was considered that a stoppage of work is

usually the most important means used by the parties to a dispute and accordingly such stoppage is among all the incidents the one which reveals most clearly the existence of a labour dispute.

It was held on the basis of the facts, in the light of this, that there had been a dispute between the employer and a great number of his employees and that it was sufficient, for the employees to be one of the parties in the dispute, that the action taken on their behalf was taken with their consent, expressed or implied, a decision on the strict legality of the mandate of the representatives of the employees or on the legal existence of the union at the time, not having to be made nor such legality to be taken into account.

It was also held that such dispute dealt with the existence of a union and that this was, as proven by the employer's resistance (CUB 751), a working condition at the premises in question, such condition in fact tending to substantially change the present working conditions (CUB 1136).

The substantial stoppage of work shown to have occurred on March 1st, 1957, was one of the incidents of a labour dispute but above all, an event which could not have happened if there had been no labour dispute at that time and the alleged shortage of work must be exclusively attributed to such work stoppage, the Umpire who enforces the law "being (necessarily) guided by actual facts and not only by the way the incidents are interpreted by the parties" (CUB 641).

As the situation described in Section 63(1) was established in evidence and as the claimant's occupation was not among those excepted from the union's demand for recognition as bargaining agent, and the claimant was therefore directly involved in the labour dispute, he was held rightly disqualified under Section 63.

JURISPRUDENCE: CUBs 751, 1136 and 641 q. followed.

Referred to in CUB 1627.

Appeal of claimant's union dismissed (CUB 1447).

Appeal of insurance officer upheld (CUB 1448).

January 17th, 1958 (Reversed)

CUB 1449

ADJUDICATION PROCEEDINGS (Evidence—employer information, Interpretation).

EARNINGS (Allocation, Reinstatement damages, Services performed, Usual remuneration).

Section 172(1) of the Regulations

A claimant who had formerly worked some five years as a sheet metal assembler for a given employer until he was laid off for shortage of work on July 3rd, 1956 and who then worked in the interim as a deckhand from September 14th to November 24th, 1956 for another employer, finally reported back for work with the given employer on January 9th, 1957 in answer to the latter's registered letter on January 7th. The employer reported to the local office that he had not been able to reach the claimant by phone in the first instance, on December 27th, 1956 for the purpose of recall to work and that when the claimant finally reported, he had filed a grievance with his union for lost pay from December 27th to January 8th inclusive.

The grievance was settled by the employer paying the claimant the sum of \$68.40 for December 28th, January 2nd, 3rd, 4th and 7th, 40 hours at his hourly rate.

The insurance officer allocated this sum as earnings for the weeks in which the days in question fell and set up an overpayment of benefit of \$43.00. The appeal of the claimant's union on the grounds the sum constituted instead damages for violation of the bargaining agreement was unanimously dismissed by the board of referees.

Upon further appeal, it was held the sum did not constitute earnings as defined. No services were actually performed by the claimant at any time for such moneys. These moneys could only remotely be said, as distinguished from those paid in CUB 1443 in the form of compensatory leave for overtime work by a canalman, to be in connection with services performed in that services were at some time performed by the claimant for his employer under a contract of service. Furthermore, moneys paid under the above circumstances are not specifically mentioned in any one of the paragraphs from (a) to (g) of Regulation 172(1), the wording of which leaves much to be desired as to precisely what its provisions were intended to include as earnings for the purpose of unemployment insurance benefit.

JURISPRUDENCE: CUB 1443 distinguished.

Appeal of claimant's union allowed.

January 24th, 1958 (Affirmed)

CUB 1450
(*French*)

ADJUDICATION PROCEEDINGS (Commission's responsibility re claims and disqualification procedures, Evidence—benefit of doubt, irrelevant to decision, Insurance officer—general, Interpretation, Jurisdiction of Umpire re aspect not brought to appeal, Umpire—decision).

LABOUR DISPUTE (Existence of labour dispute (conceded), Duration of disqualification, Financing, Grade or Class, Merits irrelevant, Termination of disqualification—other Union membership & procedure).

Section 63(2) of the Act

The claimant was one of 756 employees of a cotton mill who had to be released between December 12th and December 15th, 1956 because of the shortage of work caused by the stoppage arising from the refusal on December 12th of all the 75 employees of the warping department of the mill to comply with modifications introduced by the employer with respect to the performance of their work. On December 18th, at a meeting of the members of the union which was a party to the collective agreement governing the working conditions of all the employees, the president announced the decision of several members of the union executive committee to make loans from the union funds to the unemployed members on request, which loans such members would have to promise to repay in the event of receiving unemployment insurance benefit or being paid their salary by the employer. The average "loan" was about \$10.00 a week, the first of these being made on December 24th and the last on January 14th, being discontinued following a meeting of the union on January 17th, 1957.

Upon appeal against the majority decision of the board of referees which upheld a disqualification under Section 63, the only question to be

considered was the financing of the dispute inasmuch as the appellant union conceded the situation described in Section 63(1) and the insurance officer had given the claimants the benefit of doubt with respect to direct interest and participation.

It was found that some money given out of the union's fund had been paid to certain members as conditional loans to help them during the stoppage of work, that the loans at least in part, came from the dues such members had paid into the union fund and, moreover, that while the members, by virtue of a legal fiction, were not the real and absolute proprietors of the money in the union fund, they nevertheless had, by virtue of the union's constitution and regulations, an interest in the disposal of the money and a right of control, whether directly or as principals, over the operations of the fund.

Financing a dispute was stated to consist in helping financially one of the parties to the dispute in a way which, intentionally or not, is likely to prolong the stoppage of work or to support that party in its demands. It was further stated that loans of money to members of the union, some of whose members are interested parties or participants in the dispute, created a presumption that such loans had had such result and all the more so when the repayment of such loans was subject to limited conditions and otherwise would be converted into an unconditional gift. It was held therefore, in the absence of evidence to rebut such presumption, that there was financing of the dispute on the basis of the above finding of fact.

It was further held that the financing was by the union's members on the basis that the loans were in fact made to some members and these members accepted them readily and without objection, it being unnecessary to decide regarding the regularity of the procedure followed in granting such loans (or as contended by the union, regarding the distinction between the union's corporate entity and its membership) nor to decide the question of any delay on the part of the insurance officer in making his decision (on December 24th, 1956, the union having given such delay as excuse for the loans), this being a matter of administration exclusively under the jurisdiction of the Commission.

It was finally held that all employees of the class of the union's members, whether they all obtained loans or not, have financed the dispute, within the meaning of paragraph (a) of Section 63(2); the employees of the same grade, i.e., of the same occupation as any of those mentioned in paragraph (a) and who do not belong to the union, come under paragraph (b) of the same section.

The duration of the disqualification was however restricted to the duration of the financing, i.e., January 14th, 1957.

JURISPRUDENCE: Applied in CUBS 1459-60-61.

Appeal of claimant's union dismissed.

January 24th, 1958 (Affirmed)

CUB 1451

ADJUDICATION PROCEEDINGS (Commission's responsibility re claim procedures, Evidence—employer information).

CLAIMS MATTERS (Benefit Period readjustment, Local office practices, Qualification).

EARNINGS (Retirement Pay).

UNEMPLOYED (Retirement Leave).

A claimant, on the misinformed advice of her employer, filed a benefit claim immediately on retiring from her employment although she would not be able to draw benefit for the next six months during which she was receiving retirement leave pay. On finding out at the end of that benefit period that she did not then have the required contributions for a new claim because her first initial claim had been made prematurely, she applied to the local office to have the commencement date of that claim readjusted to coincide with the end rather than the beginning of her retirement leave. Such adjustment would have enabled her to continue her right to benefit a year later on the basis of an academic computation at that time of the maximum benefit she would then appear to have otherwise had the right to, if she had deferred her first application for benefit until her retirement leave had expired.

The Umpire upheld the majority decision of the board of referees, disagreeing with its dissenting member, on the grounds the conditions regarding a claim filed at the end of the claimant's retirement leave would be unpredictable at the beginning of such leave, six months earlier. The actual conditions were similar to those in CUB 1336 in which it was held that misinformation from the ex-employer should not be accepted as justification for a readjustment of a benefit year and that it is not the duty of the officers of the local office to volunteer advice to claimants as to how to obtain the maximum benefits payable under the Act.

JURISPRUDENCE: CUB 1336 followed.

Appeal of the claimant dismissed.

January 24th, 1958 (Varied)

CUB 1452

(French)

ADJUDICATION PROCEEDINGS (Board of Referees—credibility, unanimous, Commission's responsibility re claims procedures, Disqualification retroactive, Evidence—credibility, documentary, Insurance officer—reexamination after decision, Interpretation, Jurisdiction of adjudicating authority re aspect raised by adjudication).

AVAILABILITY (Antedate, Proof, Voluntarily left—delayed claim).

CLAIMS MATTERS (Antedate—good cause for delay, Suspension of benefit pending appeal).

VOLUNTARY LEAVING (Availability questionable, Retroactive disqualification).

*Sections 46(3), 60(1) & 80 of the Act
and*

150 & 167 of the Regulations

The provisions of Regulation 150(2) are explicit and cannot be ignored by a board of referees as to thirteen (13) weeks being the maximum period for which antedate may be allowed and it is in accordance with

Regulation 167 for the payment of benefit to be withheld pending appeal but only to the extent this maximum period was exceeded, namely, one week.

The local office's reception of the claimant's insurance book fourteen weeks prior to his actual claim, was considered, not without hesitation, as acceptable evidence that the claimant had also written a letter at that time and to that extent, it being his first claim, he has established good cause for delay in filing his claim, as per the board of referees' finding, but only for a delay until two weeks later at the most, after which he has not proven his availability for work in view of his unaccountable negligence during twelve more weeks in not following up with a second letter, as would a person really desirous of looking for employment or of merely establishing his right to benefit.

Upon antedate being allowed upon appeal, the insurance officer may examine a claim to determine whether the claimant (who had stated on making his actual claim that he had left his job on December 24th by reason of illness and then had found on January 3rd when he went back to his employer that he had been replaced) left his employment voluntarily without just cause in the first place (his insurance book being mailed to the L.O., on January 8th).

Appeal of insurance officer allowed, except for first 2 weeks (which are subject however to reexamination re Voluntary Leaving).

January 24th, 1958 (Affirmed)

CUB 1453

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present, examination of witnesses, finding of fact, majority decision, Evidence—irrelevant to decision, statements after disqualification and after Board of Referees, interpretation, Jurisdiction of adjudication authority re aspect not brought to appeal, Question of fact).

CAPABLE OF WORK (Defined, Proof, Separation from employment in this connection).

CLAIMS MATTERS (Punitive disqualification).

Section 54(2)a) of the Act

A claimant had applied for benefit six weeks after having voluntarily left her employment to rest at home, declaring herself to be capable of work. Six months later she stated that she had been sick since her separation, seeing her doctor on account of sickness and going to a hospital for injection, and that at the time of declaring herself capable of work on filing claim, she had thought she would be able to work but that she now wished to declare herself as not capable of work since her separation. Finally in her appeal against a retroactive disqualification as not capable and punitive disqualification for her false statement as to her capability at the time of filing claim, she submitted a doctor's certificate stating her fit to work from the commencement of her claim.

The board of referees which took full advantage of its right to examine the claimant and obtain other information and also examined the evidence as to its relevancy and adequacy, (guided by CUB 1207), found the claimant not capable.

It is entirely a question of fact whether a claimant was capable of work within the meaning of Section 54(2)a) of the Act, that is, whether her powers of labour "a merchantable article in any of the well known lines of the labour market" (CUB 1077), and there is no reason to find the board of referees misapplied the Act to the facts established.

The question of the disqualification under Section 65 of the Act was not before the Umpire for decision as it was not placed before the board of referees by the insurance officer and the board has not dealt with it.

JURISPRUDENCE: CUBs 1077 referred to and 1207 followed.

Appeal of claimant dismissed.

February 7th, 1958 (Affirmed)

CUB 1454

ADJUDICATION PROCEEDINGS (Evidence—burden on claimant, statements after disqualification).

AVAILABILITY (Antedate, While not fully Capable of work, Circumstances not beyond control, Proof, Voluntarily left—delayed claim).

CAPABLE OF WORK (Permanent incapacity, Proof, Separation from employment in this connection, Workmen's compensation).

CLAIMS MATTERS (Antedate—good cause not shown under circumstances—Prescribed Manner of making proof).

Section 46(3) of the Act

and

Section 150 of the Regulations

A 29 year old claimant left his employment as a fitter after 3½ years by reason of a recurrence of disc trouble in his back, for which he was then paid full workmen's compensation for a period of six months ending on May 1st 1957 when it was reduced to 50% following a medical report that he had become physically capable of performing light work. The claimant filed an initial claim for benefit on May 23rd, 1957 and the next day applied for its antedate to May 1st, giving as the cause for his delay in filing claim, his expectancy of being given light work by his former employer for which he reported first on May 1st, then a week later and finally on May 15th when it was suggested he try elsewhere; instead on May 17th he had seen the Workmen's Compensation authorities who suggested he seek unemployment insurance benefit.

Following refusal of antedate, the claimant appealed to the board of referees (which sustained it by majority decision) on the basis the claimant had had similar experience in 1953, the claimant's union representative explained that the real reason for delay in claiming was that the claimant did not know that his compensation was being reduced until he received his cheque on May 17th nor that he could draw both compensation and benefit, until May 22nd, when a compensation board official so advised him.

It was held the claimant did not have good cause for delay as, on the basis of similar experience previously, he should have known, upon being

informed by his doctor of his capacity for work at the end of April, that to qualify for unemployment insurance benefit he had to prove he was available for work, that is, able, willing and ready to accept immediately any offer of suitable employment and also known that the required manner for making such proof was to attend at the local office and register for employment. Furthermore the evidence does not establish that he was prevented from so attending by circumstances over which he had no control or that under the circumstances existing at the time, it was reasonable that he should not so attend.

JURISPRUDENCE: Distinguished in CUB 1570. Applied in CUBS 1593 & 1608.
Appeal of claimant (represented by union) dismissed.

February 7th, 1958 (Reversed)

CUB 1455

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous, Evidence—contributions record).

UNEMPLOYED (Available for full-time work despite, Engaged on own account, Farmers, Off-season unemployment, Voluntarily left previously).

*Sections 54(1) and 57(1) of the Act
and*

Sections 156 and 158(3) of the Regulations

The claimant who had been in employment as a janitor for a manufacturing firm from 1951 to September 24th, 1955, had been either laid off by reason of his physical condition or dismissed for having taken time off to rest. The claimant was on claim from November to June 1956 when he moved to a 40-acre farm (15 acres in woodland) he had purchased the previous month. In a questionnaire completed on February 12th 1957, the claimant reported that he had raised only 15 acres of corn the previous year and no work was done during the off-season and he declared he was available for work all winter. His contribution record showed he had only 27 of the 30 contributions required by Section 156(b) during the two complete farming off-seasons prior to February 10th, 1957, and no contributions in the preceding 12 months.

The claimant was disqualified as not unemployed inasmuch as his main occupation was the operation of a farm and the board of referees unanimously dismissed his appeal, chiefly because of his poor contribution record.

It was held that the board had attached unwarranted importance to the claimant's contribution record during periods which were almost entirely before the date on which the farm was purchased and that the other factors all tended to indicate the claimant had not yet become "employed on his own account in the operation of a farm" within the meaning of Regulation 156. Among the other factors were particularly noted the state of the claimant's health, the size of the farm, the extent of his farming activities prior to February 10th, 1957, his registration for employment in his usual occupation and his availability for work in the vicinity of his home or away from his district.

Appeal of the claimant allowed.

February 7th, 1958 (Reversed)

CUB 1456

ADJUDICATION PROCEEDINGS (Board of Referees—credibility, unanimous, Existence of L.D., Proof; Stoppage of Work; Union Existence).

medical certificates, statements after disqualification, Jurisdiction of adjudicating authority re aspect not brought to appeal, Umpire—decision).

CAPABLE OF WORK (Married women's Regulations, Pregnancy (not raised), Separation from employment in this connection).

CLAIMS MATTERS (Married women—separation solely . . .).

VOLUNTARY LEAVING (Availability questionable, Capability for work—reported cause, Domestic circumstance—marriage, Just cause shown, Suitability of employment given as reason, Working conditions).

Section 161 of the Regulations

The claimant who had been employed as an inspector for a glass company for almost four years, voluntarily left on her doctor's advice because the steady night shift work was affecting her health. She was disqualified under Regulation 161 only for the period of two years after her marriage (which had taken place five and a half months prior to her separation).

Following disqualification the claimant submitted a medical certificate stating that she had been under her doctor's care for several weeks and had been advised by him to seek day work instead of shift work. In further support of her appeal to the board of referees, a more detailed medical certificate was submitted showing she had lost eight pounds in the two months prior to separation and had become very anemic and unable to adjust her eating and sleeping to the shift changes, to wit, a night shift every third week. The employer had also stated there was no exclusively day work available.

It was held that there was no evidence (the board of referees unanimously to the contrary on the basis of her history employment on shift during the four years previous) that the domestic situation of the claimant was a contributing factor to her separation, the evidence rather establishing that the claimant had just cause for voluntarily leaving and that her separation was in consequence of a reason solely and directly connected with her employment. Furthermore, the claimant proved she had never withdrawn from the labour market by finding regular day work, as suggested by her doctor, which she accepted although it paid only half her former rate of pay.

Appeal of claimant's union allowed.

February 7th, 1958 (Affirmed)

CUB 1457

ADJUDICATION PROCEEDINGS (Board of Referees—credibility, unanimous, Disqualification—joint, Umpire—decision).

CLAIMS MATTERS (Married women—leaving the area).

VOLUNTARY LEAVING (Change of residence as cause, Domestic circumstance—marriage, Just cause not shown, Married women leaving the area, (no) Prospects of other employment, Transportation and travel as cause).

Section 60(1) of the Act

and

Section 161 of the Regulations

A 19 year old claimant who was married on November 23rd, 1956, in applying for benefit on March 4th, 1957, stated she had voluntarily left her

employment as a teller for a bank from November 21st, 1955 to February 28th, 1957 because she no longer had a place in which to reside in that town and could only find living accommodation at the place to which she had moved with her husband and from which she had no means of transportation to work at the bank.

The claimant was disqualified for voluntarily leaving without just cause and under Regulation 161 for the two-year period following her marriage.

The board of referees unanimously upheld both disqualifications, observing that the claimant had left an area where she was employed to establish residence in a place where there were no reasonable opportunities for her to obtain suitable employment. This observation was supported by the comment of the local office manager that the local office had had no requests for clerical help from any of the communities adjacent to the claimant's residence.

It was held that the evidence did not warrant interfering with the unanimous decision of the board of referees.

Appeal of claimant disallowed.

February 7th, 1958 (Affirmed)

CUB 1458

(French)

ADJUDICATION PROCEEDINGS (Commission's responsibility re policy, Estoppel, Interpretation, Jurisdiction of adjudicating authority re Policy).

EARNINGS (Allocation, Overtime Credits, Usual remuneration).

UNEMPLOYED (Contract of service, Compensatory leave, Usual remuneration).

*Sections 54(1) and 57(1) of the Act and 158, 172
and 173 of the Regulations*

The claimant had been employed with the Department of Transport as a quartermaster from March 19th to November 18th, 1956, after which he went on compensatory leave for overtime credits accumulated during the navigation season. The leave lasted till December 10th after which he returned to his ship until the end of the season, i.e., the end of December 1956.

He was disqualified as not unemployed during the period of compensatory leave and the disqualification was unanimously upheld by the board of referees.

It was held in dismissing the appeal, that the employment conditions of the claimant were not substantially different from those affecting the employees referred to in CUB 1443. In CUB 1443 the Umpire had referred to CUB 246 which discussed the status of a canal employee while on compensatory leave; he had been described therein as not working, but nevertheless not qualified for benefit as he was kept on the employer's payroll, his insurance book was retained by his employer, he was credited with annual leave, sick leave, special leave and finally his salary was subjected to deductions for superannuation contributions. The Umpire had pointed out that the underlying principle in CUB 1443 was the same as in CUB 246 and he could find no valid reason in the Act and Regulations to permit benefit for a period during which canalmen received their "usual remuneration", which meant their full pay. Furthermore, the recruitment posters

and the Treasury Board authority under which overtime credits accumulated, made it clear that the moneys received during compensatory leave could not be termed a gratuity or bonus within the meaning of Regulation 172(2) (a) as the accumulation of overtime credits was a definite condition of a contract of service between the employees and the department and was not paid by the pleasure of the Crown. Furthermore, these were paid for a period which fell between navigation seasons and accordingly, were allocated under Regulation 173(1), to the period following the closing of navigation.

As regards the effect of unemployment insurance contributions not being levied with respect to earnings on compensatory leave, the matter had not been submitted to the statutory authorities and accordingly the Umpire had thought it inappropriate to comment thereon.

JURISPRUDENCE: CUB 1443 (quoted extensively) which applied CUB 246, followed. Applied in CUBs 1590, 1652, 1655.

Appeal of the claimant dismissed.

February 14th, 1958 (Affirmed)

CUB 1459
CUB 1460
CUB 1461
(French)

LABOUR DISPUTE (Financing, Grade or Class Union Membership).

Section 63(2) of the Act

The claimants in each of these three cases had lost their employment by reason of a stoppage of work attributable to the labour dispute at the factory where they were employed, which dispute was described in detail in CUB 1450. The claimants had been employed as spooler and as cloth checkers respectively. There was on file in each case a statement signed by two employees who were members of the union to the effect that when the stoppage of work took place they had held positions in the same occupation for the same employer as in each of the present cases.

The claimants had been disqualified under Section 63 from December 24th, the date on which the first "loan" was made by the union to a member of the union who had lost his employment within the meaning of Section 63. The board of referees had upheld these disqualifications by majority decisions.

It was held that, inasmuch as the claimants belonged to the same grade as some employees of the class of the union's members, they fell under paragraph (b) of Section 63(2), for the reasons set forth in CUB 1450.

JURISPRUDENCE: CUB 1450 applied. Applied in CUB 1590.

Appeal of the claimants dismissed.

February 14th, 1958 (Varied)

CUB 1462

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous, Evidence—medical certificate, Statement after disqualification).

AVAILABILITY (While not fully capable of work, Disqualification shortened, Intention of claimant, Proof, Prospects of employment, Restricted as to light work and as to occupation).

CAPABLE OF WORK (Availability affected, Separation in this connection, Suitability for employment likely to be offered).

Section 54(2)a of the Act

The claimant, a railway yardman, broke his ankle while off duty on October 15th, 1956. On registering for employment as a gateman and producing a medical certificate stating he was "now well enough to work at a job such as gateman" (although still on crutches), the claimant was disqualified from April 21st, 1957, as not available for work in that he had not proved he was "capable of performing some kind of work under the conditions reasonably similar to those under which employees ordinarily work". After filing a renewal application on August 16th, 1957, and submitting a medical certificate of the day previous stating he was "fit for light work as of now", the claimant appealed his disqualification being continued simply because his foot was still in a cast and he still used crutches. In his appeal, dated September 7th, 1957, he stated he was quite capable of performing employment as a bench worker, gateman, despatcher or any work of a sedentary nature.

The board of referees unanimously dismissed the appeal on the grounds the jobs he would be capable of handling were almost non-existent. The cast on the claimant's foot was removed on October 16th, 1957.

It was held that there was no alternative but to uphold the unanimous decision of the board of referees as regards the claimant's availability prior to September 7th, 1957, but his availability after this date was proven by his willingness to accept any work of a sedentary nature, the board appearing to have overlooked this part of his statement. It was further held that the fact that vacancies seldom occurred in the occupations which the claimant was willing to accept and, according to medical evidence, capable of performing, was not a sufficient reason of itself for the board finding the claimant was not available.

JURISPRUDENCE: Applied in CUB 1642.

Appeal of the claimant dismissed up to September 7th, 1957.

February 14th, 1958 (Reversed)

CUB 1463

ADJUDICATION PRINCIPLES (Board of Referees—unanimous, finding of fact, Disqualification—punitive, revision, wording, Evidence—burden on claimant, contributions record, employment history, enforcement officer findings).

CLAIMS MATTERS (Punitive disqualification).

EARNINGS (Reporting, Services performed).

UNEMPLOYED (Availability for full-time work, Engaged on own account, Family enterprise, Farmers, Proof).

*Section 54(1), 57(1), 65 and 79 of the Act
and*

Sections 156, 158(3) and (4) and 172 of the Regulations

The claimant was a labourer who had been laid off for shortage of work, by the employer for whom he had worked at various times and in various seasons over the past seven years. In addition, the claimant had also worked at a nearby golf club during the two previous seasons. Four months after lay-off and applying for benefit, he had been discovered, on routine spot check by an enforcement officer, to be the joint owner, with his wife, of a 50-acre farm (36 acres pasture, 12 of corn and hay) on which they had resided for the past nine years and now had seven cows (five milking) and 200 turkeys, the latter being "owned" by the wife.

The claimant had been disqualified as not unemployed and his appeal unanimously dismissed by the board of referees on the grounds he "was employed in industry (34 weekly contributions recorded for the year prior to his claim) and also operated a farm" and had only 19 contributions during the two preceding off-seasons. The insurance officer then disqualified the claimant also under Section 65 for having made false statements that he was unemployed; he later amended this disqualification to rest it instead upon the claimant's original statement on application for benefit, that he was not carrying on any occupation or business, and his subsequent failure to notify the Commission of his employment in the operation of a farm. The board was again unanimous in appeal.

It was held the evidence did not establish that the claimant was "employed on his own account in the operation of a farm" within the meaning of Section 156, but rather that the nature and extent of the work which he habitually performed on the farm continued not to be such as to "prevent him from accepting full-time employment in a particular week" (Section 158(4)). He was accordingly held to be unemployed, although not thereby relieved of the obligation of weekly reporting his earnings for such services as he did perform.

The claimant being found unemployed, it was also held there was no basis for the original punitive disqualification under Section 65 for false statements to that effect and, in the absence of new facts subsequent to that disqualification being imposed, as required by Section 79, no basis for the insurance officer amending that disqualification.

Appeal of claimant allowed.

February 20th, 1958 (Reversed)

CUB 1464
(French)**ADJUDICATION PROCEEDINGS** (Evidence—burden on administration, employer information, medical testimony, Insurance officer—general).**MISCONDUCT** (Insubordination, Industrial offence, Proof, Relations with supervisors).**VOLUNTARY LEAVING** (Capability for work—likely cause, Personal circumstances, Just cause shown, Misconduct alternatively, Tantamount to V.L.).*Section 60(1) of the Act*

A 39 year old single clerk stated on separation after six years, that she had been laid off because of absences attributable to illness; she had been absent two weeks, in addition to her holidays in July of the previous year for general debility, ten days the following April for acute bronchitis, one or two days every month and 6 and one half days in the last four months. The employer, a federal government department, stated as the reason for separation, the claimant's unsatisfactory attendance and refusal to undergo, at the request of its personnel office, a medical "physical" examination.

It was held that the question whether or not such refusal, allegedly because the medical officer was a stranger (from the local Immigration Office) and there was no nurse in the office, constituted an act of industrial misconduct or whether the claimant knew or should have known her release would result from such refusal must be resolved from the evidence submitted. The evidence must establish first that the order given by the employer (CUB 159) was "of a reasonable nature" in the circumstances. It was held, the majority of the board of referees notwithstanding, that the onus of proof, which lies in this respect on the insurance officer, was not discharged because no positive or pertinent information was obtained from the employer or physician concerning the purpose and the necessity of the medical examination at the time it was requested.

JURISPRUDENCE: CUB 159 (quoted) applied. Applied in CUB 1590.

Appeal of claimant allowed.

February 25th, 1958 (Affirmed)

CUB 1465

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous re credibility, Evidence—medical certificates).**CAPABLE OF WORK** (Married Women's Regulations, Permanent incapacity, Pregnancy, Separation from work).**CLAIMS MATTERS** (Married Women—Incapacity for work).**VOLUNTARY LEAVING** (Capability for work cause—pregnancy).*Section 161 of the Regulations*

A 23 year old claimant who had been married just ten months previous, left her employment after five years as a clerk-typist and stated on later applying for benefit, that she had left voluntarily because of pregnancy. She also stated she had been confined seven weeks after separation and as of five weeks after birth, was capable of work in her own occupation.

Upon being disqualified under the Married Women's Regulation then in force, she submitted as proof that her separation was because of incapacity for work due to illness rather than pregnancy alone, a medical certificate to the effect she had showed for several months prior to her confinement, apparent symptoms of sugar diabetes which did not appear thereafter, and she had left her job on her doctor's advice. The board of referees unanimously dismissed her appeal.

It was held that for the purpose of being relieved of this particular disqualification, there must be established "some measure of permanency to the incapacity" (CUB 1221) for it to be accepted as the real cause of the claimant's separation from employment within two years of her marriage. JURISPRUDENCE: CUB 1221 (quoted) applied.

Appeal of claimant dismissed.

February 27th, 1958 (Affirmed)

CUB 1466

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous re finding of fact, Question of Fact).

VOLUNTARY LEAVING (Duration of disqualification, Extenuating circumstances, Grievance raised with employer, Just cause not shown, Personal circumstances, Proof—onus on claimant).

Section 60(1) of the Act

A 29 year old single labourer who had worked from September 3rd to 11th, voluntarily left the next day, stating as his reason that he had been unable to secure an advance of one day on his wages regularly due to be paid the Tuesday following, the 13th, because such advance was contrary to company policy, and allegedly he had not eaten the last three days.

He was disqualified on the grounds he did not have just cause for leaving within the meaning of Section 60(1) of the Act. The board of referees unanimously dismissed his appeal in the absence of any evidence that he had made any effort to arrange elsewhere to obtain the necessary food but reduced his disqualification to two weeks on the grounds the claimant may have felt he had no alternative.

It was held to be solely a question of fact and that on the evidence, there was no basis for differing with the unanimous finding of the board, the reduction of the disqualification moreover taking care of all extenuating circumstances.

Appeal of claimant dismissed.

February 28th, 1958
June 17th, 1958 (Affirmed)

CUB 1467
CUB 1467A
(French)

ADJUDICATION PROCEEDINGS (Board of Referees—examination of witnesses, investigation by Board, unanimous decision—credibility, Evidence—employer information, irrelevant to decision, presumption, statements after Board of Referees, Rehearing on Umpire's referral as new facts needed).

AVAILABILITY (Family enterprise, Intention of claimant, Presumption of N.A., Proof, Retired from regular employment, Voluntarily left—ignored by I.O.).

UNEMPLOYED (Apprenticeship, (Non) Availability for full-time work despite, Engaged on own account, Family enterprise, Proof, Usual remuneration).

*Sections 54(1), 57(1) and 76 of the Act
and
Section 158 of the Regulations*

A 31 year old claimant who had worked as a bulldozer operator at his brother's sawmill from May to December, was found upon investigation by the local office two months later to be spending eight hours a day there although receiving no income of any kind therefrom, having no regular working hours and taking all his meals at home two miles away. He was disqualified as having failed to prove he was unemployed but his appeal was unanimously upheld by the board of referees. The insurance officer appealed inasmuch as the claimant appeared to have been under a contract of apprenticeship with training being given him in consideration of his services (CUB 1231). The Umpire requested a rehearing in view of the new fact that the claimant would appear to have acquired the mill some three months after the investigation and to be operating it on his own account; he thus appeared to be working without remuneration in order to prepare himself for managing it and therefore would not have been available for work elsewhere.

The board, on rehearing, found the claimant to be not actually unemployed in view of the great portion of each day devoted by him to learning the sawyer's trade and to have been not available from the date he ceased to work there as a bulldozer operator on the grounds he was nevertheless getting ready with a view to acquiring the mill pursuant to a verbal agreement with his brother, if he was satisfied its income was sufficient. The claimant's contention that he had formed this intention only about the time he actually acquired the mill, five months after separation, was not accepted by the board in the face of serious substantiated presumptions that he had this intention from the beginning; furthermore his subsequent abandonment of this intention after a trial period of operation was considered irrelevant by the board for the purposes of its decision with respect to the earlier period.

The new unanimous decision of the board was upheld on appeal on the basis of the new evidence resulting from the board's investigation.

Appeal of claimant dismissed.

February 28th, 1958 (Affirmed)

CUB 1468

ADJUDICATION PROCEEDINGS (Board of Referees—rehearing at own instance, unanimous re credibility, Evidence—irrelevant to decision).

AVAILABILITY (Disqualification indefinite, Personal circumstances, Pregnancy, Restricted as to occupation and shifts, Suitable employment refused—joint disqualification, Voluntarily left—delayed claim).

SUITABLE EMPLOYMENT (Availability, Conditions—shift and transportation, Duration of Unemployment, Employment Market, Good cause not shown, Previous offer not accepted either, Prospects, Voluntarily left previous employment also).

Sections 54(1) a) and 59(2) a) of the Act

A 26 year old married claimant had voluntarily left her employment as an industrial nurse after $2\frac{1}{2}$ years because of pregnancy. She gave birth five months later and applied for benefit two months later again stating her mother would care for the child in the event she found work "in industrial nursing only". The same day, she refused employment as a nurse at the county hospital, preferring industrial work, and was not disqualified on the grounds she was entitled to a reasonable time after returning to the labour market to secure work of the desired type. Two months later she refused work as an industrial nurse because it entailed shift work and she was unable to obtain transportation at night to her rural residence eight miles out of town.

She was disqualified under Section 59(1)a) and as not available under Section 54(2)a) from the date of her refusal. The board (which reheard the case on the claimant's complaint she had not been given ample notice of the date of hearing) unanimously dismissed her appeal on the grounds the major industries in the area required shift work even though claimant had only done day work before.

It was held the job offer was suitable having regard to the claimant having been unemployed five months, exclusive of the period of non-availability due to pregnancy (CUB 1152A), and having been unable to find day work which was therefore not readily obtainable. Her history of daytime employment lost any significance it might have had at the early stage of unemployment, the important circumstance being that claimant could only accept day work due to lack of transportation. The restriction to day hours was not good cause for her refusal.

It was held the claimant was not available in view of her continued insistence on only day work when it was shown to be rare by her lack of success in finding any. Her finding temporary work with her former employer later was irrelevant with respect to her availability at the time of refusal seven months earlier.

JURISPRUDENCE: CUB 1152A applied. Referred to in CUB 1576.

Appeal of claimant dismissed.

February 28th, 1958 (Varied)

CUB 1469

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous varied, Evidence—(not) conclusive, credibility, employment history, statement before and after disqualification, Jurisdiction of adjudicating authority re legislation).

AVAILABILITY (Disqualification generally, Domestic circumstances, Proof, Restricted as to hours & days).

CLAIMS MATTERS (Contributions, Local office practices, Rate of Benefit).

Section 54(2)a) of the Act

A 28 year old married claimant who had been working on a part-time basis since her marriage eight years previous, was laid off by reason of a temporary shortage of work from part-time employment after one and a half years as a grocery clerk for a large department store. On applying for benefit she had stated she was still on call as auxiliary staff and could work part-time only because she could not arrange for the care of her two children for the whole week; the employer reported the claimant was usually working one, two or three days a week. The local office then required the claimant to specify the days of the week she was willing to accept employment, which she accordingly did, naming Thursday, Friday and Saturday.

The insurance officer thereupon disqualified the claimant as not available for the first three days of each week. The board of referees unanimously dismissed her appeal, stating however it was "at a loss to know why daily contributions of part-time work are spread over an entire week rendering little assistance". The chairman of the board granted leave to appeal on the grounds the "Regulations regarding availability discriminate against the employee with a pattern of part-time employment of three full days as opposed to one working the same number of hours spread over five or six days".

The unanimous decision of the board was upheld except that the claimant was held available for any three days of each week, in accordance with her employment history and her original statement, the local office requirement she be more specific as to the days having obviously forced her to restrict her availability further. The claimant's later statement that she was seeking four hours of work for six days a week was contrary to her original statement and therefore not acceptable as conclusive evidence of her availability each day of the week.

The questions raised as to the weekly spread of part-time contributions and as to the discrimination against the weekly part-time worker as opposed to the daily part-time one were considered to be outside the jurisdiction of the adjudication authority as matters of legislation.

Appeal of claimant dismissed in substance.

February 28th, 1958 (Varied)

CUB 1470

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous varied, Disqualification—extenuating circumstances, Evidence—employment history).

VOLUNTARY LEAVING (Duration of disqualification, Extenuating circumstances, Haste, Just cause not shown, Prospects of other employment investigated beforehand, Working Conditions).

Section 60(1) of the Act

A 24 year old single claimant voluntarily left employment as a cook's helper with a pulp and paper manufacturer which he had held for seven years, because his hours of work had been reduced from 40 to 32 a week.

Upon appeal against the unanimous decision of the board of referees which upheld his disqualification, it was held that he did not have just cause as the company had been operating on short-time periodically throughout his employment and the effect of the most recent cut back on his hours of work could not be determined. The fluctuation in the claimant's working hours and related income, the complete plant shut down for one week some time after the claimant had left and the materialization of the prospect of work closer to his home which the claimant had anticipated at the time of leaving, are however, extenuating circumstances for the reduction of the disqualification from six to four weeks.

Appeal of claimant dismissed, but duration of disqualification reduced.

March 5th, 1958 (Varied)

CUB 1471

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous varied, Disqualification—extenuating circumstances).

VOLUNTARY LEAVING (Domestic circumstances, Duration of disqualification, Extenuating circumstances, Just cause not shown, Working conditions).

Section 60(1) of the Act

A 36 year old married woman had voluntarily left her employment as a counter girl in a coffee shop after a two-week trial under its new management because her employer wished her to work from 6 P.M., instead of 4 P.M., to midnight and in exchange, extra hours on Saturday which conflicted with her domestic responsibilities, and had also modified her wages from \$30.00 a week to 60 cents an hour.

Upon appeal against her disqualification, which had been unanimously upheld by the board of referees, it was held that she did not have just cause for so leaving. However, upon the examination at the claimant's request, of the claim of another married woman employee who had separated shortly after "basically for the same reasons" and whose appeal had been allowed by the board of referees, the working conditions of the coffee shop, while not intolerable, were found to be far from good and the disqualification was accordingly reduced from six to three weeks.

Appeal of claimant dismissed except as to duration of disqualification.

March 5th, 1958 (Reversed)

**CUB 1472
CUB 1473**

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous reversed, Interpretation, Jurisdiction of adjudicating authority re legislation).

EARNINGS (Reinstatement damages, Services performed).

Section 172(1) of the Regulations

The claimant in each of these two cases had been discharged from his employment. Following complaint to the provincial Labour Relations Board and pursuant to the report thereon by its commissioner, the claimant was paid reinstatement money by his former employer.

The insurance officer treated such money as retroactive pay and therefore earnings under Section 172(1) and the appeals of the claimants were dismissed by the board of referees.

It was held that as there were no services actually performed by the claimant at any time for such monies and such monies are not specifically mentioned in any one of the paragraphs from (a) to (g) of Regulation 172(1), although these paragraphs refer to income similar in its source and nature, especially in that the income need not be for services actually performed, the reinstatement monies could not be held to be earnings under Section 172(1), the wording of which leaves much to be desired as to its intention.

Appeal of claimants' union allowed.

March 6th, 1958 (Rehearing)

**CUB 1474
(French)**

ADJUDICATION PROCEEDINGS (Board of Referees—recusation, Rehearing on Umpire's referral—other reasons).

VOLUNTARY LEAVING (Personal circumstances).

*Sections 60(1) and 76 of the Act
and*

Section 177(4) of the Regulations

A 27 year old single claimant who had voluntarily left her employment of nine years as a steno-typist because she suffered from sinusitis and proposed moving for relief to California where a letter from an employment agency in the city in question assured her she would have no trouble finding employment as a stenographer, decided at the last minute not to go when her friend could not accompany her as planned (because she was refused a visa by reason of eye trouble). Accordingly the claimant had applied for benefit when she could not retrieve her former employment in which she had been replaced.

The claimant was disqualified under Section 60(1) and her appeal was unanimously dismissed by the board of referees.

Upon the allegation of the claimant's representative being neither denied nor contradicted that the employer representative on the board, which had disallowed the claimant's appeal, was in the employ of the claimant's former

employer and had been directly involved in the events preceding the insurance officer's decision, contrary to Section 177(4) of the Regulations, the decision of the board was invalidated and the case was referred back under Section 76 of the Act, for rehearing by a differently constituted board.

JURISPRUDENCE: Referred to in CUB 1507A.

Appeal of claimant to be reheard.

March 6th, 1958 (Rehearing)

CUB 1475
(French)

ADJUDICATION PROCEEDINGS (Rehearing on Umpire's referral—new facts submitted).

LABOUR DISPUTE (Proof).

Sections 63 and 76 of the Act

Upon the filing on appeal to the Umpire of two documents containing much information that had not been before the board of referees (which had decided by majority vote against the claimant) and that the Umpire considered in the light of the record of the case, to contain new and very important facts, it was considered profitable to refer the case back to the board of referees under Section 76 for reconsideration and rehearing generally.

Appeal of claimant to be reheard.

March 6th, 1958

CUB 1476

June 17th, 1958 (Rehearing)

CUB 1476A

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous re finding of fact and credibility, Evidence—employer information, Rehearing on Umpire's referral—new facts needed).

AVAILABILITY (Intention of claimant, (not) Restricted generally and as to hours and occupation, Retired from regular employment).

UNEMPLOYED (Availability for full-time work despite, Full working week—part-time).

Sections 54(2)a), 57(1) and 76 of the Act
and

Section 158(1) of the Regulations

A 65 year old assistant railway station master, retired on pension and registered as a watchman, was disqualified as not available by reason of being on call each day of the week as a court constable, except during July and August and the Christmas holidays. This disqualification was removed by majority decision of the board of referees for the days on which he did not work.

The Umpire under Section 76 referred the case back to the board of referees for additional information and rehearing. As regards the claimant being unemployed, pursuant to CUB 1442 which established the criterion

of the full working week for part-time workers as the full time hours for a full-time job not a part-time one, the board was to find out how many hours a day and days a week, court constables in that local office area worked at that time, whether they were remunerated for being on call or only for the days actually called, and finally, whether the call to work was from a rotating list for a given session or was a call for all sessions. Secondly, as regards the claimant being available, the board was to find out whether the claimant was restricting his availability to this one employer's requirements only and would have accepted instead full-time work as a watchman had it become available.

Evidence at the rehearing established that court constables were only employed on the days the court was actually sitting, were required for as little as half an hour and sometimes all day and an evening sitting as well and were paid a flat rate of \$6.00 per day and that the claimant had served a total of 57 days in the given year. Accordingly the board considered the claimant had proved he was unemployed. The claimant was also considered available on the basis of being prepared to take instead, any full time work without restriction as to the hours of work or the duration of the working week.

On the basis of the new evidence, the Umpire was in agreement with the unanimous decision of the board of referees.

JURISPRUDENCE: CUB 1442 q. followed.

Appeal of insurance officer dismissed.

March 6th, 1958 (Affirmed)

CUB 1477

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous generally, Evidence—statement before disqualification, Jurisdiction of adjudicating authority re aspect not brought to appeal).

AVAILABILITY (Disqualification date, Personal circumstances, Prospects of employment, Restricted generally and as to duration, Suitable employment refused—joint disqualification—originally, voluntarily left in first place).

SUITABLE EMPLOYMENT (Availability—disqualified instead as N.A., Conditions of employment—part-time and temporary, Good cause shown, Personal circumstances, Voluntarily left previous employment also for subjective reasons).

Sections 54(2)a) and 59(1)a) of the Act

A 23 year old single woman whose employment of six months as a dictaphone operator had terminated on April 30th, according to her statement, at her employer's instance because he wished to train her replacement immediately rather than in June when she was to be married, stated in her renewal application that she was willing to work another six weeks. She then refused on May 15th an offer of permanent employment in the same capacity and at the same salary (top of prevailing rate) because she did not wish to continue to work in that capacity after her marriage and was available for only four weeks.

The claimant was disqualified under Section 59(1)a) and under Section 54(2)a). Upon appeal, the board of referees by majority decision removed the disqualification under Section 59(1)a) on the grounds she should have

been offered part-time work only and had properly refused the offer because of her honesty; however, the claimant was unanimously found not available for work in her regular occupation by reason of her approaching marriage and her refusal of the job offer.

The Umpire did not consider the disqualification imposed for refusal of the offer of employment because its removal by the board had not been appealed. The claimant, however, was held to be properly disqualified as not available from the date of her refusal (mistakenly set at three days earlier by the insurance officer), as a former full-time employee who now restricted herself to part time only (CUB 594 and 1171), and all the more so, inasmuch as for purely personal reasons she had further restricted her availability as a part-time employee to a four-week period.

JURISPRUDENCE: CUBs 594 and 1171 applied.

Appeal of claimant dismissed.

March 10th, 1958 (Affirmed)

CUB 1478

ADJUDICATION PROCEEDINGS (Commission's responsibility for notices and policy, Disqualification indefinite, procedure wording, Evidence—onus on claimant).

AVAILABILITY (Antedate, Capable of work, Disqualification indefinite, Domestic circumstances, Pregnancy, Presumption of N.A., Separated from regular employment).

CLAIMS MATTERS (Antedate—good cause for delay not shown, Local office practices).

*Section 46(3) of the Act
and
Section 150 of the Regulations*

A 32 year old married claimant was allowed benefit upon leaving her employment after 4½ years because of the employer's rule against the retention of employees who are pregnant five months. She was disqualified "indefinitely" almost five months later on the grounds she was not available for work thenceforth because of her advanced pregnancy. Her renewal claim was allowed six months later upon her statement that she had made arrangements for the care of her child of 5½ months. She then applied, three months later, for antedate of her renewal claim some 86 days earlier still. Antedate was refused, upon appeal to the board of referees, by a majority decision.

Upon further appeal, it was held that the claimant did not have good cause for delaying her claim renewal for two reasons. Firstly, her contention that she had been misled by the use of the wording "indefinite" in her disqualification for availability was not justified, although it would have been preferable for the claimant to have been disqualified instead until such time only as she proved her availability. Secondly, there was no ground for the claimant's assumption that the Unemployment Insurance Commission would notify her of the date on which her disqualification would cease; the onus was on the claimant to prove she was capable of and available for work inasmuch as a claimant does not automatically become eligible for benefit six weeks after the birth of her child. A claimant must show that

she is recovered from her confinement to such a degree that her capability for work is beyond question and also that she has made definite arrangements for the care of her child (CUB 1340) which would permit her to accept immediately any offer of suitable employment.

JURISPRUDENCE: CUB 1340 applied.

Appeal of claimant dismissed.

March 10th, 1958 (Reversed)

CUB 1479

(French)

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous, credibility and reversed, Evidence—documentary, oath, statements after disqualification).

EARNINGS (Allocation, Business on own account, Determination).

UNEMPLOYED (Availability for full-time work, Engaged on own account, Family enterprise, Retroactive disqualification, Subsidiary).

*Sections 54(1) and 57(1) of the Act
and*

Section 158(3) and (4) of the Regulations

A claimant stated at the time of filing claim for benefit that he had been laid off four months earlier because his wife's ownership of a restaurant was contrary to his employer's rules and that he had helped his wife occasionally in the restaurant but that this did not prevent him from being available at all times for any suitable employment. Upon investigation by the local office a year later, he admitted to not having found any employment since and to having been the original owner of the restaurant for about a year.

He was then disqualified retroactive ten months as not unemployed on the grounds he was in business for himself. The claimant appealed and produced two sworn declarations to the effect he had been working for the last month as a part-time canvasser for a publishing company, his wife operated the business herself, he helped in the evening, the operation was negligible and depended mainly on adolescents and he had looked for work locally. He also produced a sworn statement from his wife in which she declared having bought the business "in the name of the family head", with scanty savings, operating it for her personal profit and being assisted by her husband only in the evening. The board unanimously dismissed the claimant's appeal on the grounds the business was community property and therefore the claimant's for all practical purposes.

Upon further appeal the claimant was held to have proven his availability for full-time work within the meaning of Regulation 158(4), on the basis of his sworn declarations to that effect. Against these, there was no contrary evidence. Instead, in support, there was the very low volume of business in the restaurant which indicated, with due credit being given to the wife's work, that the claimant's participation in its operation was rather negligible and limited.

There was left the question of determining and allocating any earnings from such participation to be disposed of pursuant to the appropriate regulations.

Appeal of claimant allowed.

March 10th, 1958 (Affirmed)

CUB 1480

ADJUDICATION PROCEEDINGS (Board of Referees—procedure, unanimous re credibility, Disqualification—joint, procedure, Evidence—benefit of doubt, statement after disqualification).

AVAILABILITY (Disqualification duration shortened, Intention of claimant, Pregnancy, Proof, Suitable employment refused—joint disqualification and voluntarily left (delayed claim) in first place).

SUITABLE EMPLOYMENT (Availability—disqualified, only as N.A. and then later only for refusal, Change from usual occupation, Good cause not shown, Previous offer not accepted either, Voluntarily left last employment—subjective reasons and delayed claim).

Sections 54(2)a) and 59(1)a) of the Act

A 34 year old married woman, on claiming benefit, had stated she had voluntarily left two months previous her employment of almost two years' duration as a sewing machine operator but would now arrange for the care of her six weeks' old baby and cease nursing it if suitable work became available. The same day she refused an opportunity of returning to work in the same capacity with her former employer because she was nursing her baby.

She was thereupon disqualified for her refusal and also for being not available. The claimant appealed these two disqualifications eight days later stating that she could now accept work as her mother-in-law would care for her baby. At the time she had also been offered a job with another employer as a sewing machine operator, for which she subsequently failed to report on the grounds she usually worked on skirts rather than jackets. She was accordingly disqualified by reason of this second refusal for six weeks thereafter. The board of referees removed the disqualification imposed for the claimant's first refusal, upheld the disqualification for her second refusal on the grounds there was no real difference between work on skirts and work on jackets, and terminated the disqualification for non-availability as of the date she stated she could accept work because her mother-in-law would care for her child.

Upon appeal, it was held there was no valid reason to disturb the unanimous finding of the board which removed the disqualification for the claimant's first refusal, because the refusal itself was such a clear indication she was not available that it seemed unwarranted as an additional disqualification. Furthermore, no change was made with respect to the disqualification for non-availability, inasmuch as the board of referees saw fit to terminate it upon the claimant's statement eight days after her first refusal that she was available for work, even though the reason given at the time for her second refusal casts doubt on the sincerity of her desire to secure work (and resulted in a second disqualification under Section 59 which was upheld by the board).

Appeal of insurance officer dismissed.

March 12th, 1958 (Varied)

CUB 1481

ADJUDICATION PROCEEDINGS (Board of Referees—procedure, rehearing at insurance officer's request, unanimous decision generally, Disqualification—retroactive, Evidence—benefit of doubt, employment history, medical certificate, oath, statements after disqualification and after Board of Referees, Rehearing—new facts submitted, Umpire—hearing).

AVAILABILITY (Disqualification—retroactive, Pregnancy, Proof, Restricted as to area, travel and wages, Suitable employment refused—disqualified only as N.A. and voluntarily left (delayed claim) in first place).

CLAIMS MATTERS (Punitive disqualification).

SUITABLE EMPLOYMENT (Availability disqualification instead).

Sections 54(2)a) and 65 of the Act

A 28 year old married woman who resided in a mixed industrial and commercial suburb of a metropolitan city, had voluntarily left her employment because of pregnancy after one and a half years as a typist at \$230. a month with an advertising firm in the city. Seven months later she had applied for benefit stating she had arranged for the care of her two-month old child and was therefore available for work in future. After four months on claim, she then refused two opportunities for employment in her registered occupation in the city, the first, because the \$45.00 a week offered was lower than the \$200. a month she insisted on to cover the costs of transportation and of the care of her child, and the second, at a salary ranging from \$180. to \$200. a month, because of the excess travelling time entailed and the nausea which bus travel gave her since the birth of her child.

The claimant was disqualified retroactively under Section 54(2)a) as not available from the date of claim and under Section 65 for her related false statements. The board of referees unanimously dismissed her appeal but upon rehearing it following the insurance officer's referral of a lengthy letter from the claimant, recommended leave to appeal regarding good faith as an excuse under Section 65. Upon appeal to the Umpire, the claimant's counsel submitted a medical certificate regarding the claimant's motion sickness and affidavits of three persons regarding arrangements the claimant had made from the date of her claim for the alternative care of her child. Upon counsel being informed that the case would not be heard *de novo* by the Umpire, it was referred back to the board of referees for rehearing; in the absence of new facts there was no change in its previous decision.

Upon further appeal, the claimant was held to be not available after the date of her refusals of employment in view of her continued restriction of employment to her own locality at the desired rate of pay after a lengthy period without success showed such employment was not readily obtainable, but she was relieved of this disqualification retroactive to the commencement of her claim in view of the evidence not being conclusive and the doubt having to be resolved in the claimant's favour.

The disqualification imposed for the claimant's false statements as to availability was removed as she was justified as an ordinary individual in regarding herself as available and there is no evidence she realized she might not be so within the meaning of the Act (CUB 1376).

JURISPRUDENCE: CUB 1376 (quoted) applied.

Followed in CUB 1492 and applied in CUB 1515q.

Appeal of claimant allowed except as after refusals of offers.

March 12th, 1958 (Reversed)

CUB 1482

ADJUDICATION PROCEEDINGS (Board of Referees—claimant present, examination of witnesses, majority decision on credibility, procedure, rehearing at insurance officer's request, unanimous decision on credibility reversed, Evidence—benefit of doubt, employer information, oath).

MISCONDUCT (Proof, Relations with supervisors and fellow-workers, Theft).

Section 60(1) of the Act

A claimant, who was in employment the last six months as a warehouseman for a wholesale fruit and vegetable firm, was seen carrying a cardboard carton similar in shape and size to a box of limes while walking towards his station-wagon. The night foreman, upon this being reported, found a box of limes under a cushion behind the driver's seat. The claimant was dismissed upon his failure to give any reasonable explanation to the superintendent who confronted him with the situation. The claimant was disqualified for having lost his employment by reason of his own misconduct. His appeal was dismissed by majority decision of the board of referees which noted the claimant had not invoked his union's assistance nor sued the employer for accusing him of theft. As the employer had not been notified of the board's hearing nor invited to attend, the insurance officer arranged a rehearing at which the claimant, his union representative, the manager of the company and its solicitor were present. Three affidavits were submitted from the employee witness, the night foreman and the superintendent.

The board disregarded these affidavits on the grounds that their introduction into adjudication proceedings would convert the board into a court of criminal law without the benefit of counsel and cross-examination under oath, and that the board was unable to properly assess such evidence. In accordance with CUB 405, it gave the benefit of doubt to the claimant and unanimously reversed its previous decision.

Upon appeal it was held that the board must consider all evidence placed before it and all the more so if it is evidence taken under oath and that the evidence satisfactorily showed the claimant to have lost his employment by reason of his own misconduct.

JURISPRUDENCE: Followed in CUB 1646.

Appeal of insurance officer allowed.

March 12th, 1958 (Reversed)

CUB 1483

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Disqualification procedure, Evidence—burden of proof on administration, employer information, weight of evidence, Insurance officer—general).

AVAILABILITY (Capable of work, Efforts to find work, Pregnancy, Proof, Prospects of employment, Restricted as to Duration).

CAPABLE OF WORK (Availability affected, Pregnancy, Separation from employment, Suitability for likely employment).

Section 54(2)a) of the Act

A 30 year old claimant who had been employed over three years as an assembler with a manufacturer of electrical products, stated, on filing renewal claim and registering as a packer, that she had been laid off for

shortage of work. She also declared she was pregnant and expected to be confined approximately three months later but she added she was nevertheless still available for work.

A placement officer commented that because of her pregnancy the claimant was not considered generally acceptable to employers for employment in any occupation for which she was qualified. She was disqualified as not available and her appeal was unanimously dismissed.

It was held that the claimant had satisfactorily proven her availability. The insurance officer had relied entirely on the placement officer's comment which should not have been interpreted to mean that the claimant was definitely not acceptable to any employer and the evidence did not support the conclusion that the claimant's lack of success in applying for work in several industries was due to any reason other than because no work was available.

JURISPRUDENCE: Distinguished in CUB 1555 and applied in 1642.

Appeal of claimant's union allowed.

March 12th, 1958 (Reversed)

CUB 1484

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Disqualification procedure, Evidence—burden of proof on administration, weight of evidence, Insurance officer—general).

AVAILABILITY (Capable of work, Efforts to find work, Pregnancy, Proof, Prospects of employment, Restricted as to Duration).

CAPABLE OF WORK (Availability affected, Pregnancy, Separation from employment, Suitability for likely employment).

Section 54(2)a) of the Act

A 28 year old assembler on applying for benefit stated that her last employment of two weeks' duration with a manufacturer of electrical products for whom she had worked intermittently over the past year, had ended for shortage of work six months earlier. She also stated she had since become pregnant and expected to be confined four months hence but was nevertheless still available for work.

A placement officer commented that because of her pregnancy the claimant was not considered generally acceptable to employers for employment in any occupation for which she was qualified. The claimant was disqualified as not available. Two weeks later she reported she had become re-employed with the same employer. Her appeal was dismissed unanimously by the board of referees.

On appeal, it was held that the claimant had satisfactorily proven her availability. The insurance officer had relied entirely on the placement officer's comment which should not have been interpreted to mean that the claimant was definitely not acceptable to any employer, particularly as she found employment two weeks later.

JURISPRUDENCE: Followed in CUB 1509 and applied in CUB 1513 and distinguished in CUB 1555.

Appeal of claimant's union allowed.

March 14th, 1958 (Affirmed)

CUB 1485

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, Disqualification procedure).

AVAILABILITY (Disqualification indefinite and retroactive, Restricted as to area and wages, Suitable employment refused—joint disqualification).

SUITABLE EMPLOYMENT (Availability—joint disqualification, Change from usual area and wage rate, Conditions of employment—living conditions, transportation facilities, wages, Good cause not shown).

Sections 54(2)a and 59(1) of the Act

A 24 year old married woman whose employment for six months in a nearby metropolitan city as a stenographer at \$60.00 a week had terminated, was offered 3½ months later permanent employment as a stenographer at \$35.00 for a 40-hour week in a town some ten miles away from her home. She refused it on the grounds the bus schedule did not allow her to commute conveniently to this town, the salary was much lower than that which she previously earned and living there would have cost her \$25.00 a week.

As the work was in the claimant's usual occupation and at the prevailing rate, the claimant was disqualified under Section 59(1)a; she was also disqualified indefinitely from ten days prior to the offer as not available. Two months later on renewing her claim, the claimant stated she had not received the disqualification notices and was granted leave to appeal. The board of referees dismissed the appeal.

On the basis of the facts the unanimous decision of the board was affirmed, although with some reservation regarding the only reason it gave for its decision.

Appeal of claimant dismissed.

March 14th, 1958 (Reversed)

CUB 1486

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Evidence—enforcement officer finding, Interpretation).

EARNINGS (Board and lodgings, Determination, Services performed).

UNEMPLOYED (Employed, Earnings, Family enterprise, Full working week—hours, Proof, Voluntarily left previously to new work).

VOLUNTARY LEAVING (Change of occupation and residence).

*Sections 54(1) and 57(1) of the Act
and*

Sections 158(1) and 172(1)d) of the Regulations

A 36 year old bookkeeper of Japanese-Canadian extraction, who had voluntarily left after more than two years, his employment as an office manager in an eastern metropolis to go to Vancouver, had been disqualified, upon then applying for benefit, for voluntarily leaving without just cause. An enforcement officer sent by the local office seven months later, interviewed the claimant who admitted working 20 hours or so a week in keeping the books and operating his father-in-law's newly purchased store, in the rear of which he and his wife lived with her parents.

The claimant was disqualified retroactively to the date of filing claim as having failed to prove he was unemployed. The board of referees, guided by CUB 1212, unanimously dismissed his appeal.

It was held that the claimant was in employment within the meaning of the Act as such services as he rendered are normally performed for remuneration (CUB 1404). However, he was held to be unemployed within the meaning of the Act during the seven months in question inasmuch as the evidence did not permit determining the exact number of hours which constituted the full working week in his case and the twenty hours a week admitted to could not reasonably be considered such week either in his occupation or at the premises in question (CUB 1403).

It was further held that any free board and lodging he is said to have received should be considered, however, as earnings in such weeks.

JURISPRUDENCE: CUBS 1404 and 1403 applied and CUB 1212 distinguished. Applied in CUB 1515.

Appeal of claimant allowed (subject to requirements as to earnings).

April 10th, 1958 (Affirmed)

CUB 1487

ADJUDICATION PROCEEDINGS (Evidence, onus on claimant, Interpretation).

CLAIMS MATTERS (Dependency—maintenance).

Section 47(3)a)i) of the Act

A railway pensioner filed claim on retirement at age 65 and claimed dependency rate of benefit for a wife who had been confined to a mental hospital for 37 years. He stated he had been supporting her all that time by way of clothing and monthly payments to the hospital at the rate of .50¢ a day for her maintenance, which the provincial authorities assessed at a value of \$2.50 a day.

Upon appeal against the dependency rate being refused, it was held that Section 47(3)a)i) of the Act was in no way ambiguous and required that the evidence show the husband paid either the whole or more than half the cost of the wife's maintenance. The evidence showed the claimant had at no time paid more than half such cost and there was accordingly no basis, despite sympathy, for the claimant, for differing with the board's unanimous decision.

Appeal of the claimant dismissed.

April 10th, 1958 (Affirmed)

CUB 1488

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present, unanimous finding of fact, Evidence—statements before and after disqualification, weight of evidence, Jurisdiction of adjudicating authority re aspect raised by adjudication).

UNEMPLOYED (Availability for full-time work despite, Contract of service, Employed, Engaged on own account, Proof, Voluntarily left previous to new work).

*Sections 54(1) and 57(1) of the Act
and*

Section 158(3) and (4) of the Regulations

A 25 year old claimant had left his employment of one and a half year's duration as a molder of plastic at \$400. a month, to enter a partnership in which, as Secretary-Treasurer, his remuneration would be a share

(25%) of the company's earnings. Five weeks later he filed claim for benefit on the basis that there were no orders on hand at the time, although, according to his statement, he still spent part of each day conducting experiments and transacting business for the company, and that he was available for work under a contract of service until there was sufficient business to fully engage his partner and himself.

The insurance officer disqualified the claimant on the grounds he was not unemployed but self-employed and still actively engaged in the operation of a business.

It was held that, while the evidence was contradictory as to whether he was a partner or an employee under contract of service, there was no reason to disagree with the board's unanimous finding he was engaged in business on his own account. The claimant had left highly paid employment with the intention, which he still had, of making this venture a full-time occupation, and was willing to forego full-time employment under a contract of service in favour of processing any sizeable order for his Company. This, when taken into account with his daily work for the Company, was sufficient evidence that the nature of his self-employment at no time ceased to be such it would not have prevented him from accepting full-time employment in a particular week. However the liquidation of the Company some four months later was a new fact the insurance officer should take into account as of that date.

Appeal of the claimant dismissed.

April 10th, 1958 (Affirmed)

CUB 1489

(French)

ADJUDICATION PROCEEDINGS (Board of Referees, familiarity with local situation, unanimous—finding of fact, Disqualification, extenuating circumstances not available, Evidence—medical testimony, Question of fact).

AVAILABILITY (Defined, Domestic circumstances, Prospects of employment, Restricted generally and as to area, Suitable employment refused—disqualified only as N.A., voluntarily left in first place).

SUITABLE EMPLOYMENT (Availability—disqualified instead as not available, Domestic circumstances—Good cause not shown, Voluntarily left last previous employment—subjective reasons).

Section 54(2)a) of the Act

A 28 year old married day-labourer had voluntarily left his employment on December 5th, after six months in a woodcutting camp because of mutual dissatisfaction, he with his wages of \$7.50 a day and the employer, with his work; he was not disqualified as he would have been released anyway two days later for shortage of work. Ten weeks later (February 20th), he refused on the grounds his wife expected to be confined shortly (March 14th), an offer of work as a lumberjack at \$6.50 to \$7.50 a cord at a camp 262 miles away, his fare being refunded one way after 52 days of work or 54 cords and his return fare \$39.06 after 70 days or 100 cords.

He was disqualified as not available for work. He appealed, stating he could not afford the help needed by his wife for the care of a one year old child and the five-day old baby and submitting a medical certificate to the effect the claimant was obliged to stay with his wife due to her precarious physical condition.

It was held that the claimant was not available for work within the meaning of the Act—this being mainly a question of fact on which the board of referees, whose duty is to keep abreast of local employment conditions, was unanimous—as he was not ready to accept immediately any suitable employment which might be brought to his attention nor moreover employment of a kind he was likely to find and in an area where there were reasonable opportunities for such.

Appeal of claimant dismissed.

April 11th, 1958 (Affirmed)

CUB 1490

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—general).

VOLUNTARY LEAVING (Availability questionable, Grievances not raised, Just cause not shown, Proof—onus on claimant, Prospects of other employment not investigated beforehand, Suitability of employment given as reason, Trial period before V.L., Working conditions).

Section 60(1) of the Act

A 47 year old married woman, registered as a cook and last employed as a combination cook at \$1.34 an hour until laid off after six months, was offered employment as a cook four months later. She refused it as entailing night work for which she had no transportation home at 2 A.M., but was engaged instead to work in another restaurant operated by the same employer, as a cook from 8 A.M. to 5 P.M., five days a week. She left after only five days on the grounds she was not accustomed to carrying heavy loads of food up and down stairs, had sprained her ankle, had to wash pots and scrub floors, had to work Sundays and finally was being paid as a cook's helper only, at the lower rate of \$1.06½ cents an hour.

She was disqualified for voluntarily leaving without just cause.

It was held that the claimant did not have, according to the unanimous finding of the board of referees which considered all aspects of the case, just cause for voluntarily leaving as she has not shown that the working conditions were so unsatisfactory she had no alternative but to leave nor that beforehand she had endeavoured to seek employment more to her liking, nor made representations to her employer or to officials of her union in a genuine effort to have her grievances remedied.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of claimant dismissed.

April 14th, 1958 (Affirmed)

CUB 1491

ADJUDICATION PROCEEDINGS (Board of Referees, familiarity with local situation, unanimous-finding of fact, Estoppel, Insurance officer—general).

AVAILABILITY (Capable of work, Employment prospects, Restricted generally and as to area and travel, Retired).

CAPABILITY (Availability affected, Retired, Suitability for likely employment).

CLAIMS MATTERS (Contributions).

Section 54(2)a) of the Act

A 64 year old claimant who had been employed as a timekeeper and payroll clerk for over six years, during the last 18 months of which he was

employed doing survey tracings at home because of his poor health (a chronic respiratory ailment that made travel of any distance distressing and prevented him taking work to be performed outside his home), lost his employment allegedly because there was no more tracing work to be done.

It was held on the basis of the facts that the claimant was not available for work, as found by the insurance officer and the unanimous board of referees, which was no doubt aware of the local conditions of employment. Availability is closely related to capability and the claimant was not capable of performing work under conditions reasonably similar to those under which employees ordinarily work inasmuch as there is no normal demand in the labour market for home workers and even less so when the claimant removed himself to a small community where the rents were more within his means.

The claimant's contention that the insurance officer was estopped by the claimant's prior payment of contributions for work performed at his home from now finding him not available unless he could work outside it, was rejected because, as pointed out in CUB 338, the opportunity and duty to test a claimant's capability for work arises only after that employment terminates.

JURISPRUDENCE: CUB 338 (quoted) applied. Followed in CUB 1557.

Appeal of the claimant dismissed.

April 14th, 1958 (Varied)

CUB 1492

ADJUDICATION PROCEEDINGS (Board of Referees, majority decision—finding of fact, Evidence, burden on claimant, credibility).

AVAILABILITY (Circumstances beyond control, etc., Effort to find work, Employment prospects, Proof, Restricted as to area, duration and seasons, Student—not directed and presumption of non-availability not rebutted, course's compatibility with usual working hours of occupation, claimant's intention re work—disqualified only as N.A.).

CLAIMS MATTERS (Punitive Disqualification—availability).

SUITABLE EMPLOYMENT (Availability, disqualified instead as N.A.).

Sections 54(2)a) and 65 of the Act

A 26 year old married man, who had been last employed as a salesman in a large industrial area, from which employment he had been laid off November 16th, after nine months, because of low production, had moved on March 18th succeeding, to a small community where he had commenced a course leading to his matriculation. This course entailed, according to the school's principal, two classes in the forenoon and two in the afternoon, in effect half a year's course in a third of a year, terminating on June 27th only. On June 3rd, he refused a salesman's position located some fifty miles from where he lived, on the grounds he was available for such work only until he took up a position somewhere else on July 1st.

The claimant was disqualified from March 17th as not available for work, in that he was attending school on a full-time basis during normal working hours, and also disqualified under Section 65 for false statements.

It was held that the claimant, as found by majority decision of the board, was not available in the objective light of his prospects for employment in relation to a certain set of circumstances beyond his control or which

he had deliberately created (CUBs 1138, 1154 and 1161). His enrolment in a full-time course, while commendable as improving his future chances of employment, considerably reduced his availability which had already been restricted by his move to a small community. The claimant has failed to rebut the presumption of non-availability, despite his statement he was prepared to leave the course on work being offered, in the absence of evidence he had made any effort to obtain employment. His contracting for summer work selling children's Bibles for the organization which ran his college revealed rather an intention to complete the course instead.

As to his false statements of being available, he, as an ordinary man, would have been justified (CUB 1481) in so regarding himself and there is no evidence he realized he may not have been, despite the grave doubt created in this regard by his failure to disclose his full-time attendance at school, which doubt nevertheless must be resolved in his favour.

JURISPRUDENCE: CUBs 1138, 1154, 1161 and 1481 followed.

Appeal of claimant dismissed re S.54(2)a) and allowed re S.65.

April 14th, 1958 (Reversed)

CUB 1493
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, procedure, unanimous—reversed, Commission's responsibility re adjudication procedures, Interpretation, Umpire—decision).

CAPABLE OF WORK (Sickness Benefit).

CLAIMS MATTERS (Rate of Benefit, Waiting Period).

Sections 54(2)a), 55, 66 and 69(3) of the Act

A claimant with respect to whom a benefit period was established at a weekly rate of \$24.00 on April 21st, and who, in the first two weeks of this period, would, but for the waiting period under Section 55, have established entitlement to \$14.00, was temporarily laid off on Friday, May 3rd, until May 7th, but then failed to report on the 7th because he fell ill that day.

The claimant was disqualified under Section 54(2)a) but the disqualification was removed by the board of referees pursuant to its interpretation of Sections 55 and 66. The insurance officer appealed on the basis of CUB 1341 which had not been published at the time of the board's decision.

It was held that the claimant had been properly disqualified under Section 54(2)a) as having failed to prove he was capable of work. He could not be relieved from this disqualification pursuant to Section 66 because, as pointed out in CUB 1341, he had not fully served the waiting period. On the basis provided by Section 69(3), he would have earned the right, but for Section 55, to only \$4.00 more worth of benefit for Monday, May 6th and there remained as of May 7th, \$6.00 of the \$24.00 credit needed to exhaust the requirements as to the waiting period. Consequently, he had not become entitled to benefit before he became incapable of work by reason of his illness, as required by Section 66 to be entitled to relief.

JURISPRUDENCE: CUB 1341 followed. Followed in CUB 1580.

Appeal of insurance officer allowed.

April 15th, 1958 (Affirmed)

CUB 1494

ADJUDICATION PROCEEDINGS (Board of Referees, procedure, unanimous—general, Interpretation, Jurisdiction of adjudicating authority as regards legislation).

CLAIMS MATTERS (Qualification, Seasonal Benefits).

Sections 45(1), (2) and (3), 50(a) and 53 of the Act

A claimant who filed an initial application for benefit on November 30th, 1956, was found to have the 30 weekly contributions in the last two years and eight in the last year, required under Section 45(1) but only 16½ of the 24 weekly contributions in the last year required under Section 45(2), for a second benefit period to be established within the period of two years prior to making his new claim. Accordingly, the insurance officer found he was only able to qualify the claimant for seasonal benefit under Section 50(a), to the extent of 10 weeks at \$15.00 a week.

The claimant appealed on the ground Section 53 was ultra vires in including Section 45(2) among the excepted provisions that would not apply in respect of seasonal benefit periods, as a result of which his previous claim, which was only a seasonal benefit period, was taken into account as a claim period within the last two years, its effective date being December 11th, 1955, and he was subjected to the requirements of Section 45(2) which he could not meet. The board of referees unanimously maintained the adjudication but did not give its opinion on the validity of Section 53 as a matter purely of law and outside its jurisdiction.

It was held that the adjudication was proper and that Section 53 was not, as contended by the claimant, ultra vires the Parliament of Canada which enacted it, in view of the 1940 amendment to the B.N.A. Act which gave that Parliament sole and exclusive jurisdiction in unemployment insurance matters.

Appeal of claimant dismissed.

April 22nd, 1958 (Rehearing)

CUB 1495

ADJUDICATION (Evidence—conclusive, statements after Board of Referees, Rehearing—new facts submitted).

AVAILABILITY (Proof, Prospects of work, Restricted as to duration and seasons, Student—course's compatibility with off-season, intention re work).

Sections 54(2)a) and 76 of the Act

A university student who had been steadily engaged all summer (May 3rd to August 24th as a truck driver since the end of his previous school term was laid off three weeks before the new school term (September 16th) by reason solely of shortage of work. The insurance officer disqualified him from benefit as not available for work in view of the short period of time before his return to school. The board of referees unanimously dismissed his appeal.

It was held that the facts left absolutely no doubt that the claimant was ready and willing to work during the three weeks remaining and that it would not be a realistic view of the claimant's availability status to treat this period as separate and distinct from the preceeding four months.

Moreover the claimant could resort to his union's hiring facilities in addition to those of the local employment office and also work on a short-time basis was ordinarily available in the claimant's registered occupation of truck driver. It was held that these were both important facts which were not before the board of referees, in fairness to whom therefore a rehearing under Section 76 was directed on the basis of a full investigation of these facts by the local employment office and submission to the board of referees for consideration.

Appeal of claimant to be reheard.

April 23rd, 1958 (Varied)

CUB 1496
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, procedure, unanimous—varied, Disqualification, revision on new facts, Evidence, burden on claimant, documentary).

AVAILABILITY (Disqualification duration, Efforts to find work, Proof, Restricted as to duration, Student —intention re work, Voluntarily left—joint disqualification).

VOLUNTARY LEAVING (Availability, Change in occupation cause, Duration of disqualification, Haste, Just cause not shown).

*Sections 54(2)a), 57(3), 60(1), 75 and 79 of the Act
and*

Section 183(1) of the Regulations

A 17 year old single claimant, who had been laid off from employment as an assistant buttermaker for 1½ years, had found employment for himself a month later as a bushworker as a temporary measure pending the start of a course at the provincial dairy school. He voluntarily left such employment after five weeks and two weeks later enrolled in the six-week long dairy course.

The insurance officer disqualified him under Section 60(1) of the Act for a period of five weeks and disqualified him also under Section 54(2)a) for as long as he had not proved he was available for work. The board of referees unanimously dismissed the claimant's appeal. Several months later the claimant asked authorization to appeal to the Umpire. A review of his claim documents in the local office indicated that an employment officer at that office had actually advised the claimant two days before the course started, on January 6th, to take such course.

On the basis of these new facts, the insurance officer pursuant to Section 79, terminated the disqualification for non-availability as of January 5th. On the claimant's further appeal, the Commission granted an extension of the 30-day delay pursuant to Regulation 183(1). The Umpire, pursuant to Section 75 of the Act, authorized the extension of the delay of 60 days for appeal after the board of referees' decision.

It was held that the claimant did not have just cause for leaving his employment as early as two weeks before the course started, but that the disqualification should be reduced to two weeks in view of the claimant's limited experience as a bushman, and the fact he had obtained such employment for himself as a stop gap only while waiting for the start of the course

for which he had registered beforehand. It was also held that the disqualification as not available until the course started was correct, in view of the claimant's clear intention in this regard as shown by his early separation; it was incidentally noted that Section 57(3) of the Act did not have the effect of rendering automatically non-available a claimant who follows a course on his own initiative but left such claimant to prove his availability without the privilege conferred by the Act.

JURISPRUDENCE: Followed in CUB 1528.

Appeal of claimant dismissed except for Section 60(1) in part.

April 23rd, 1958 (Varied)

CUB 1497
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—varied, Disqualification, revision on new fact, Evidence, benefit of doubt, medical testimony).

CLAIMS MATTERS (Married women—cause of separation solely connected with employment).

SUITABLE EMPLOYMENT (Availability—disqualified only for refusal, Change from usual wage rate as cause, Conditions—transportation and wages, Duration of unemployment—long, Good cause not shown, Suitability of offer—health and pregnancy, Voluntarily left last previous employment also for subjective reasons).

Sections 59 of the Act and 161 of the Regulations

A 20 year old claimant eight months after her marriage had voluntarily left her work of four years' duration as a stripper in a tobacco company on the grounds she was allergic to tobacco and submitted in support a doctor's certificate. Although this was her first separation since her marriage she had not been disqualified by reason of Regulation 161(3)a)iii), being apparently motivated by a cause solely and directly connected with her employment. Three months later, however, she refused an offer of employment in a knitting mill five miles away on the grounds the wage rate was too low in relation to the additional \$3.00 per week for taxi transportation she claimed she would need, and her health did not permit taking cold lunch at the plant, a medical certificate being submitted in support.

In answer to a local office query, it was established that the claimant was pregnant although she stated she had not known it till two or three weeks after her separation. The insurance officer disqualified the claimant for six weeks under Section 59(1) and on the basis of the new fact disclosed, disqualified under Regulation 161, retroactively, from the date of her separation to two years after the date of marriage.

The claimant submitted in her appeal a further certificate from her doctor to the effect he had ordered her to quit work because she had been suffering from intoxication likely caused by tobacco, also that there was no certain evidence before she quit that she was pregnant and that even if she had not been he would have had to advise her to quit anyway. The board of referees unanimously dismissed the appeal. The claimant informed the local office her child was born eight months after her separation but submitted a medical certificate that she was to have been confined only a month later.

It was held that the employment offered was suitable under Section 59(3) in view of the length of the claimant's unemployment and of her incapacity for work in her usual occupation but that a doubt was established in the claimant's favour by her physician's testimony as to the cause of her separation.

Appeal of claimant dismissed re Section 59 and allowed re Regulation 161.

April 25th, 1958 (Affirmed)

CUB 1498

ADJUDICATION PROCEEDINGS (Board of Referees—majority decision, Disqualification—revision on new facts, Evidence—statements after disqualification).

VOLUNTARY LEAVING (Described, Disqualification period, Grievances raised with employer, Just cause not shown, Prospects not investigated beforehand, Suitability of employment, Tantamount to V.L.).

Section 60(1) of the Act

A 27 year old married woman, on initial claim, without ascertaining the prospects of employment elsewhere, gave notice of her intention to terminate her almost three years' employment as a machine operator and accounts clerk because the employer would not promote her to another vacant position carrying a higher salary than the \$70.00 a week she was earning, which she contended was too low for the peak-load duties she performed. She was in turn released by the employer ten days earlier than the date intended.

Upon appeal, it was held that she was, as found by majority decision of the board of referees, properly disqualified under Section 60(1) for voluntarily leaving and as of the date notified rather than the earlier date of release, in accordance with the principle established in CUB 639. The original disqualification as of the earlier date of actual release had been properly amended by the insurance officer in the light thereof, following the claimant's appeal to the board in which she explained for the first time the reason for the earlier date of separation.

JURISPRUDENCE: CUB 639 followed.

Appeal of claimant dismissed.

April 25th, 1958 (Reversed)

CUB 1499

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Disqualification in relation to extenuating circumstances, Evidence, presumption, statements before disqualification).

AVAILABILITY (Capable of work, Disqualification duration, Intention of claimant, Pregnancy, Presumption of N.A., Proof, Voluntarily left—disqualified only as N.A.).

Section 54(2)a of the Act

A married claimant on application for benefit stated she was unable by reason of pregnancy to return after a three-week holiday period to her employment of 22 months' duration as a mixing machine operator with a

candy manufacturer. She admitted she was not available as she would be confined three months later although she expected to return to her previous employment in a couple of months thereafter.

It was held that she was properly disqualified as not available for work from the date her vacation period ended, there being no legal basis for shortening the period to six weeks before confinement, as the presumption of non-availability for only six weeks before does not arise in view of the claimant's written admission with respect to the longer period. The board of referees had erred in interpreting CUB 930, by unanimous decision, as permitting such amendment regardless, on the grounds that the claimant's dire financial need, in view of living apart from her husband without any means of support, constituted such unusual distressed circumstances that the claimant was forced to be available for work regardless of her pregnancy.

JURISPRUDENCE: CUB 930 distinguished.

Appeal of insurance officer allowed.

April 25th, 1958 (Varied)

CUB 1500
(*French*)

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present, examination of witnesses, unanimous decision—credibility varied, finding of fact reversed, Evidence, contributions record, Umpire, appellants).

UNEMPLOYED (Available for full-time work, (Not) Engaged on own account, Farmers, Proof, Voluntarily left previously).

VOLUNTARY LEAVING (Change of income as cause, Duration of disqualification, Grievances raised with employer, Just cause not shown, Prospects of other employment, Suitability of employment given as reason).

*Sections 54(1), 57(1), 60(1), 72 and 74 of the Act
and*

Sections 156 and 158(4) of the Regulations

A 41 year old claimant voluntarily left his employment as a piece-work lumberjack from October 4th to February 8th following. He gave as his reason the reduction of his earnings since January 28th from the initial \$10.00 or so a day to a net of \$4. to \$4.50 by reason of the employer insisting thereafter that the lumberjacks haul the cut wood to a spot four miles away at their own expense (\$2.50 a day); furthermore, the employer had refused the claimant's offer to work for a net wage of \$7.00 a day instead.

It was held, as per the unanimous board of referees, which had the opportunity of hearing the claimant and his representative, that the claimant did not have just cause for leaving as the poor working conditions and related reduced earnings were inherent in forestry operations at that time of year. The claimant should have held his employment rather than deliberately put himself out of work at a time where jobs in the area were scarce. However, (following CUB 146) the disqualification for voluntary leaving was amended to terminate with the end of operations which, incidentally occurred a month later on March 7th.

As regards the finding that the claimant was not unemployed, inasmuch as he lived on a little farm (100 acres on which he cultivated 30 acres yielding 15 tons of hay, 300 bushels of oats and 30 bags of potatoes and otherwise kept a few livestock), he had a large family (11 children) to assist him in its operation and he had worked 23 or 24 weeks (20 insurable) in the last 52 weeks preceding his claim. He could therefore be said, the board of referees to the contrary, to have not been working on his own account in the operation of a farm (Regulation 156). Furthermore the evidence clearly showed his work on the farm did not prevent him from accepting employment within the meaning of Regulation 158(4). He was consequently held to be unemployed within the meaning of Sections 54(1) and 57(1).

As regards whether the claimant's union was an association of workers under the terms of Section 72(b), in view of the definition thereof given in CUB 1264 which held the farmers' union was not, representations by the claimant's union had been accepted by the Umpire in connection with the appeals of its members in CUBs 1285, 1286, 1287 and 1289 and an appeal by the said union had been accepted in CUB 1438 and therefore was accepted by the Umpire in the present case.

JURISPRUDENCE: CUBs 1285, 1286, 1287 and 1289 referred to and 1438 followed. CUB 146 applied.

Appeal of claimant's union allowed re S.54(1) and in part re S.60(1).

April 25th, 1958 (Reversed)

CUB 1501

ADJUDICATION PROCEEDINGS (Board of Referees, majority decision—finding of fact, procedure, Disqualification, revision, Evidence, benefits of doubt, Jurisdiction of adjudicating authority re aspect raised by adjudication).

AVAILABILITY (Disqualification retroactive, Efforts to find work, Intention of claimant, Proof, Prospects of employment, Restricted as to area and occupation, Suitable employment (not) refused).

CLAIMS MATTERS (Prescribed manner for making claims, Punitive disqualification—re unemployed).

*Sections 54(1), 54(2)a) and 65 of the Act
and*

Section 146(1)a) of the Regulations

A claimant was discovered, almost six months after he had been in receipt of benefit following lay-off in May allegedly for shortage of work after 16 months of employment as a loader driver in a large industrial area, to have purchased three months before lay-off, a 100-acre farm situated 32 miles away. He had rented the farming of it till next spring but nevertheless had moved on it two days before lay-off and had passed the summer building a new house and repairing the barn and fences.

He was disqualified retroactively as not unemployed because he was engaged in business on his own account as a farmer. He was also disqualified for false statements that he was unemployed. These disqualifications were removed by unanimous decision of the board of referees. Instead a disqualification for non-availability, suggested by

the insurance officer as an alternative, was substituted by majority decision of the board in view of the report of few job opportunities in the area or in the claimant's registered occupation during the winter and in view of the jurisprudence to the effect that availability is restricted by a claimant's change of residence from an industrial area to an area remote from any employment centre.

Upon appeal, it was held the benefit of doubt should be given the claimant as regards his availability for work as he continued to come in to report weekly to the local office for that industrial area and also submitted proof he had made many applications for employment at the same time. Furthermore, there was no evidence he had refused suitable employment or that his change of residence had prevented him from accepting any. No member of the board of referees made any reference to the effect he was not available because he was engaged in building a house.

It was noted, however, that his failure to report his change of residence, in addition to being irregular, would have justified a disqualification under Regulation 146(1)a) for having failed to make his claim in the prescribed manner.

The appeal of claimant's union allowed.

April 25th, 1958 (Affirmed)

CUB 1502

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—credibility, Evidence, burden of proof on claimant, presumption, weight of evidence).

AVAILABILITY (Capable of work, Disqualification duration, Domestic circumstances, Intention of claimant, Pregnancy, Presumption of N.A., Proof, Prospects of employment, Restricted as to hours and occupation, Voluntarily left—disqual. only as N.A.).

CAPABLE OF WORK (Pregnancy, Separation from employment, Suitability for employment likely to be offered).

Section 54(2)a) of the Act

A 39 year old married woman had voluntarily left her employment after a year as a waitress in the evening (5 p.m. to 12:30 a.m.) because she expected to be confined for pregnancy five and a half months later.

She was disqualified as not available for work. The board of referees unanimously dismissed her appeal but noted certain exceptional circumstances: Her notification to the local office a month prior that she wished lighter work, her good grounds for leaving in view of her previous loss of a child under similar circumstances, her particular condition which was not obvious. The board felt her condition should have permitted, in view of her proven intention to continue in the labour market, that her disqualification be deferred until such time as she was considered not generally acceptable to employers.

It was held, however, that the claimant had failed to show exceptional circumstances sufficient to rebut the presumption she was not available. Her condition not being obvious, she would have, as in CUB 1097, if there had been no other evidence. However, the claimant at the same time had restricted her availability (although registering as a cashier which entailed considerable standing—which she could not do) by only being

able to work after 5 p.m. when her husband could care for the children and by having her employment codes changed to child monitor and clerk general office. To that extent it was considered she was no longer able to perform the duties of an occupation ordinarily obtainable during the evening in a town that size and she was consequently held to be not available.

JURISPRUDENCE: CUB 1097 referred to.

Appeal of claimant dismissed.

April 25th, 1958 (Affirmed)

CUB 1503

(French)

ADJUDICATION PROCEEDINGS (Evidence—contributions record, Interpretation).

UNEMPLOYED (Available, Engaged on own account, Farmer, Off-season unemployment).

Section 156 of the Regulations

A 31 year old single claimant had worked from November 2nd to March 17th following, as a blacksmith in a nearby timber camp, until laid off for shortage of work. On filing claim, he completed a questionnaire in which he stated that he owned an 84-acre farm (30 under cultivation, 20 in pasture and 34 in woodland; 7 cows and 2 horses) on which he did the work himself without help.

The insurance officer disqualified the claimant, being of the opinion he was self-employed in the operation of such farm and could not be considered unemployed, under Regulation 156. His only unemployment insurance contributions in the last year (18 weekly) were for his work as blacksmith, and he had no contributions whatsoever during the two off-seasons preceding the one during which he had filed his claim.

The board of referees unanimously dismissed his appeal.

It was held the claimant had failed to fulfil the conditions stipulated in paragraph (b) of Regulation 156 and therefore could not be considered to be unemployed, even if his work as a farmer was reduced to a minimum during the winter months (the claimant had stated he was forced to stay at home however because it was impossible for him to work outside and come back to a cold house).

Appeal of claimant dismissed.

April 25th, 1958 (Varied)

CUB 1504

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present, unanimous—varied, Disqualification, extenuating circumstances).

VOLUNTARY LEAVING (Domestic circumstances, Duration of disqualification, Extenuating circumstances, Just cause not shown, Misconduct alternatively—insubordination, Working conditions).

Section 60 (1) of the Act

A 20 year old married claimant, of Hungarian extraction, lost his employment as a machine mechanic after six weeks because he insisted on going home each noon from 12:00 to 12:50 P.M. to prepare lunch for his

wife who was confined to bed after three weeks in hospital. He stated, through an interpreter, that he had not understood that one of the conditions of employment, at the time he was hired as an apprentice saw filer on the company's maintenance staff, was that he would stagger his lunch and break periods from those of the regular crew so that certain of his duties could be performed while the machines being serviced were not operating.

He was disqualified for voluntarily leaving without just cause and his appeal was unanimously dismissed by the board of referees. In granting leave to appeal, its chairman, noting the claimant's unfamiliarity with the English language, regretted his failure to attend the hearing at which it might have been able to find in his favour if it had been established that he had simply misunderstood and had not deliberately disobeyed orders.

Upon appeal, it was held the claimant's language difficulty noted by the board was a mitigating circumstance and the disqualification was reduced accordingly to one week.

Appeal of claimant dismissed except as to duration of disqualification.

April 25th, 1958 (Varied)

CUB 1505

(French)

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—credibility and varied, Disqualification, indefinite, revision on new fact, Evidence—burden on claimant, credibility, presumption, statement after disqualification, Question of fact).

AVAILABILITY (Disqualification indefinite retroactive and shortened, Domestic circumstances, Pregnancy, Presumption of non-availability, Proof).

Sections 54(2)a) and 79 of the Act

A 27 year old married woman whose last employment, as a telephone operator for six months, had terminated ten months previously, filed initial claim for benefit on December 20th, 1956. Upon local office investigation on April 5th, 1957, the claimant stated she had borne a child on February 10th, 1957.

Considering this a new fact under Section 79, the insurance officer then disqualified the claimant from December 30th as not available for work for an indefinite period. The board of referees unanimously dismissed her appeal but, on the basis of her testimony as to her subsequent availability, terminated the disqualification as of the date of its hearing, May 31st. The claimant in appeal reiterated that she could prove her availability as of March 23rd, six weeks after confinement, inasmuch as she could easily procure help to relieve her of her domestic responsibilities.

It was held that the claimant had not produced the strong and sufficiently convincing proof required (as in CUBs 766 and 1141) to refute the presumption of non-availability during the six weeks preceding and the six weeks following her confinement, her allegations in any case being limited to the subsequent period. It was also held however that the information as to arrangement for the care of children, which is properly required (as per CUB 1340) by the insurance officer to establish, as a question of fact, the claimant's availability later despite her progressive domestic responsibilities and which was requested in this case of the

claimant for the first time at the hearing of the board, was as good for the past as for the future with respect to which the board accepted the claimant's answer. The claimant was accordingly held available as of the end of the six weeks after confinement.

JURISPRUDENCE: CUBs 766, 1141 and 1340 followed.

Appeal of the claimant allowed in part.

April 25th, 1958 (Affirmed)

CUB 1506

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact).

AVAILABILITY (Intention of claimant, Personal circumstances, Restricted generally and as to seasons and wages, Suitable employment refused—joint disqualification).

SUITABLE EMPLOYMENT (Availability, Conditions of employment—season and wages, Duration of unemployment brief, Good cause not shown, Personal circumstances, Prospect of return to former employment, Suitability of offer—health).

Sections 54(2)a) and 59 of the Act

An 18 year old single woman, three weeks after returning to her parents' home from employment lasting eight months as a waitress at \$22.00 a week in a restaurant 80 miles away which had closed for the summer off-season, was offered continuing employment as a waitress in a hotel 100 miles away at the prevailing wage of \$12.00 to \$15.00 a week plus room and board. She refused it on the grounds the wages were too low, she had promised to return to the restaurant when it would reopen three months later and she needed a rest and wished to stay at home with her family.

This claimant was held to be properly disqualified, under Sections 54(2)a) and 59, on the simple findings of fact on which the board of referees was unanimous, that she was not available and had refused without good cause an offer of employment which, being in her usual occupation and at the local prevailing rate, was suitable according to Section 59(2)b) of the Act.

Appeal of claimant dismissed.

April 25th, 1958 (Rehearing)
September 4th, 1958 (Affirmed)

CUBs 1507
1507A
(French)

ADJUDICATION PROCEEDINGS (Board of Referees recusation, Disqualification, extenuating circumstances, Rehearing on Umpire's referral).

VOLUNTARY LEAVING (Change of occupation and residence, Duration of disqualification, Extenuating circumstances, Just cause not shown, Personal circumstances, Prospects of employment investigated beforehand).

Sections 60(1) and 76 of the Act
and

Section 177(4) of the Regulations

A 22 year old single claimant had voluntarily left her employment of five and a half years' duration as a stenographer for the purpose of

moving with a companion (CUB 1474) to California. A letter from an employment agency in the city they proposed to go to had assured them she would encounter no difficulty in finding employment as a stenographer. After separation the claimant found she could not be admitted to the United States because of an eye condition (for which she then began a series of treatments); furthermore she could not retrieve her former employment as she had been replaced.

The claimant was disqualified for voluntarily leaving without just cause and her appeal was dismissed by the board of referees. The claimant's representative alleged in appeal that the employer representative on the board was in the employ of the claimant's former employer and had been directly involved in the events preceding the insurance officer's decision, contrary to Section 177(4) of the Regulations. As this allegation was neither denied nor contradicted, the case was referred back by the Umpire under Section 76 of the Act for rehearing by a differently constituted board, as was the case in CUB 1474.

The disqualification for voluntarily leaving was reaffirmed at the hearing though the period was reduced by majority decision of the board to three weeks.

Upon appeal, it was held that the claimant had not had just cause for voluntarily leaving inasmuch as the determining cause of separation, the employment agency's letter, did not amount to a firm and specific offer of employment. The claimant should have known that among the formalities required for admission was a certificate of good health and have waited for the results of her medical examination before giving notice. The reduction in the period of disqualification took into account any extenuating circumstances.

JURISPRUDENCE: CUB 1474 referred to.

Appeal of claimant dismissed.

April 30th, 1958 (Affirmed)

CUB 1508

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—credibility, Interpretation, Jurisdiction re aspect not brought to appeal).

CLAIMS MATTERS (Married Women—leaving the area).

VOLUNTARY LEAVING (Availability questionable, Change of residence, Domestic circumstances, Just cause shown).

Sections 60(1) of the Act & 161 of the Regulations

A 24 year old claimant, three months after marriage, voluntarily left her employment of five months' duration as a clerk-typist with a view to going with her husband to their home-town, where the cost of living was much lower, because he could not find work where they were, in his occupation as a logger. However they did not leave town after all upon his finding work on the eve of their departure.

The insurance officer disqualified the claimant under Regulation 161 and under Section 60(1) but the claimant was relieved of the latter, by unanimous decision of the board of referees, which, impressed by her sincerity, found her actions outstandingly honourable in trying to do full justice to her employer and her successor and that she had just cause in voluntarily leaving.

On further appeal to the Umpire she was not relieved, only this aspect being raised, of the disqualification imposed under Section 161 of the Regulations, as her separation from employment obviously was not in consequence of any one of the events mentioned in paragraph 3(a) of that Section (the most likely subparagraph requiring she actually leave the area).

Appeal of the claimant dismissed.

April 30th, 1958 (Varied)

CUB 1509

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—credibility, varied, Evidence, employment officer opinion, weight, Insurance officer generally).

AVAILABILITY (Available while not fully Capable, Disqualification shortened, Domestic circumstances, Intention of claimant, Married women, Pregnancy, Presumption of N.A., Proof, Restricted as to travel).

Section 54(2)a) of the Act

A 35 year old married woman, who had been employed five months as a copywriter in an advertising concern at \$5,500. per year, was laid off as unsuitable because she was unable to travel as she was lately given to understand the employer required. Having stated in her application for benefit that she expected to be confined three months later, she was interviewed by the local office two weeks later during which she stated she was willing to work as a copywriter immediately, provided she could obtain leave for confinement later and otherwise she would take a filing position at a lower salary.

On the basis of the employment officer's report that no such work was available and that the claimant, because of pregnancy, was not considered generally acceptable to employers in any occupation for which she was qualified, she was subsequently disqualified as not available from the date of her interview. The disqualification was unanimously confirmed by the board of referees.

Upon appeal, the claimant was held to be available for work until six weeks before confinement, inasmuch as the insurance officer (as in CUB 1484) seemed to have relied entirely on this report and misinterpreted it to mean the claimant was definitely not acceptable to any employer. The evidence however showed the claimant to be sincerely desirous and physically capable of accepting employment, restricted only as to travel, an unusual requirement in her occupation and therefore not a factor. Moreover, although in an advanced stage of pregnancy, there were special circumstances, a 3½ year-old handicapped daughter who required special care, training and expenses, including a full-time children's nurse at \$1650. a year, which might well influence any prospective employer to take an understanding view. The disqualification was left unchanged however as regards the period of six weeks before confinement, despite the claimant's statement she would not require more than two weeks' leave of work for her confinement and she had seen countless women doing likewise in advertising agencies.

JURISPRUDENCE: CUB 1484 followed.

Appeal of claimant allowed in part.

May 1st, 1958 (Affirmed)

CUB 1510

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, Commission's responsibility re claims procedures, Evidence, benefit of doubt, irrelevant to decision, Interpretation, Question of fact).

CLAIMS MATTERS (Dependency—maintenance of a child).

Section 47(3)a)iii) of the Act

A married man, at the time of claiming dependency rate of benefit in respect of his son, age 11 years, had explained in his dependency certificate that he was separated from his wife but still contributed to the support of his family which still resided with her. When it was discovered on routine spot check later that he had not contributed since his employment had ended, he stated that while his wife and their ten children had left him ten years previous, three of the children, including the son, were under sixteen years of age and living with his wife and for most of this period he had supported his family to the extent of \$60. a month. Such amount had been paid for the last two years through Family Court, including the last payment of \$10. made just before his seasonal employment had ended. The insurance officer reduced the claim to the single rate but the board of referees allowed the claimant's appeal at the dependency rate.

Upon appeal being taken further, it was held that the claimant was entitled to claim the dependency rate. While Section 47(3)a)iii) is in no way ambiguous and the evidence must show that the claimant pays the whole cost or more than half the usual cost of maintenance in respect of a child and maintenance at the date a claim is made is a question of fact, the time to be considered in determining this question is not the moment when the claim is made but the time when the claimant was in employment. The sum of \$15.00 a week is obviously sufficient (a question of fact on which the board was unanimous) to pay more than half the actual cost of maintenance of at least the person specifically claimed as a dependent. There is nothing in the record to indicate the minimum weekly payment required in the given case to be the main support of the young child living with his mother, the existence of a court order and obligations thereunder being entirely irrelevant in deciding whether or not a person is a dependent under the Act. Furthermore, the amount paid on account of arrears (\$225. for three months), after resuming employment, is far in excess of the \$7.00 a week difference in dependency rate which the insurance officer rightly suggested should have been paid during the eighteen weeks on claim. Such payment supports the claimant's good faith, in his original statement, that he had thought the Commission was sending his son a share of the benefit, and justifies giving him the benefit of doubt thereon despite having possibly ceased temporarily to be technically the main support of his child during his claim.

Appeal on behalf of the insurance officer dismissed.

May 1st, 1958 (Affirmed)

CUB 1511

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present and examination of witnesses, majority—finding of fact and credibility, Evidence—burden on claimant, credibility, employer information).

CLAIMS MATTERS (Punitive Disqualification—unable to find suitable employment).

SUITABLE EMPLOYMENT (Change from usual employment as regards area, Offer of employment, Proof, Prospects of other work, Studies, Unable to obtain).

Sections 54(2)b) and 65 of the Act

A single 33 year old mechanical engineer, who had worked as a methods engineer from May to August 31st and from October 1st to February 15th following, being laid off both times for shortage of work, arranged two weeks later with an employer in a town seven miles away to commence employment offered him, as assistant maintenance superintendent. However, in view of a course he was proposing to attend in that town he arranged to start only three weeks from then rather than immediately, though work was then available according to the employer.

He was disqualified under Section 54(2)b) as having failed to prove he was unable to find suitable employment and also under Section 65 for false statements in this regard. The board of referees, by majority decision, upheld the first and removed the second disqualification.

Upon appeal, it was noted that the claimant had failed to discharge, to the satisfaction of a majority of the board of referees, before which he appeared and gave oral evidence, the onus of proving he was unable to obtain suitable employment during the three weeks in question. As this was entirely a question of fact and credibility of evidence, it was held there was no alternative but to maintain their decision.

Appeal of claimant dismissed.

May 1st, 1958 (Varied)

CUB 1512

AVAILABILITY (Personal circumstances, Proof, Prospects of employment, Restricted as to hours and shift and travel but not as to occupation, Suitable employment refused—joint disqualification removed).

SUITABLE EMPLOYMENT (Availability—disqualified only for refusal, Conditions of employment—hours of work, shift, transportation facilities, Duration of unemployment long, Employment Market, Good cause not shown, Prospects of return to former work).

Section 54(2)a) and 59 of the Act

A 35 year old married woman, who, while a rural resident, had worked over a year as a take-off girl at \$1.10 an hour for a manufacturer of corrugated boxes in the city, was offered and refused continuing employment in the city as a coil winder at the prevailing rate (\$1.00 an hour).

She was thereupon disqualified under Sections 54(2)a) and 59 and her appeal was dismissed by majority decision of the board of referees.

Upon appeal it was held that the employment was suitable, according to Section 59(3), in view of the length of unemployment, three months,

excluding one month's illness. As a claimant living in a small community where employment opportunities are virtually non-existent, a refusal of employment in nearby industrial centres (other than where her husband worked where she had no assurance of being rehired) because of lack of transportation facilities (unless her hours of work were such as to permit her to drive her husband to work and back in the family car) is, as general rule, without good cause and a disqualification is all the more applicable where there is a lengthy period of unemployment (CUB 1184). While her objection to shift work (7 A.M. to 3.30 P.M. and from 3.30 P.M. to mid-night) is understandable, shift work is a recognized practice in industry and a married woman who desires or has to work must conform to the exigencies of the labour field (CUB 961).

The jointly-imposed disqualification for non-availability was removed however, as there was no evidence the claimant had restricted the type of work she would take, the only condition being normal working hours, and no evidence of any unlikelihood of her securing day-time work in a city that size (155,000 pop.).

JURISPRUDENCE: CUBs 1184 and 961 applied.

Appeal of claimant dismissed under S.59 and allowed under S.54(2)a).

May 1st, 1958 (Reversed)

CUB 1513

(French)

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Evidence, benefit of doubt, employment officer opinion, presumption, weight of evidence).

AVAILABILITY (Capable of work, Efforts to find work, Intention of claimant, Pregnancy, Presumption of Non-availability, Proof, Prospects of Employment, Restricted generally, Voluntarily left—ignored by Insurance Officer).

Section 54(2)a) of the Act

A claimant in the third month of her pregnancy voluntarily left on doctor's orders, her employment as a fitter during 20 months, registering four weeks later as a sewing machine operator and stating she would accept less strenuous work than that of fitter.

She was disqualified as not available for work indefinitely from the date of her claim. Her appeal was unanimously rejected by the board of referees.

Upon appeal, it was pointed out that on the basis of the jurisprudence (CUBs 530, 620 and 930) a claimant is presumed to be unable to work and unavailable until six weeks after the day of confinement unless there are (as in CUB 620) unusual circumstances to rebut the presumption of incapacity and non-availability, such as subsequently obtaining employment during that period (CUB 621). It was considered that, in the absence of satisfactory proof to the contrary, there were, in a city as important as Three Rivers, employment opportunities in less arduous occupations for which the claimant was qualified and that she was ready to accept. Furthermore the statement of a placement officer to the effect the pregnant condition of a claimant renders her "generally unacceptable by employers", cannot be interpreted to mean the said claimant was definitely not acceptable to any employer (CUB 1484), particularly as she found herself employment, three and a half

months after separation, as a chambermaid for a tourist cabin operator. Although a part-time job only (25 hours in a six-day week), it permits one to assume she was ready for work.

Accordingly, it was held that the evidence adduced in the present case established at least a doubt that the claimant, taking into account the particular circumstances of her case, had successfully rebutted the presumption of incapacity and non-availability and such doubt was resolved in her favour.

JURISPRUDENCE: CUBs 530, 620, 930 and 1484 (quoted) followed and 621 applied.

Appeal of claimant allowed.

May 13th, 1958 (Affirmed)

CUB 1514

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous, Evidence, burden of proof on claimant).

LABOUR DISPUTE (Attributable to, Directly interested, Duration, Existence of L.D., Incidents characteristic of L.D., Loss of employment, Picketing, Proof, Relief, Stoppage of work, Termination of stoppage, Union membership, Working conditions).

Sections 2(j) and 63 of the Act

A machine operator with 32 years' employment by a manufacturer of bed springs, mattresses and upholstered furniture, was unable to report for work because the factory was closed down by a strike of the union which was certified as sole bargaining agent for all the employees although no collective agreement existed yet.

He was disqualified under Section 63 and his appeal was unanimously rejected by the board.

Upon appeal, he was held to have been properly disqualified under Section 63. Firstly, the characteristics of a labour dispute within the meaning of Section 2(j) were present: wages and working hours were in contention between employer and employees, the two parties were unable to reach an accord, the union rejected conciliation board's recommendation, a strike followed and the plant was picketed. Secondly, the dispute which was in existence prior to the strike and continued through a lengthy period of negotiation until settlement nine months later had brought about a substantial stoppage from the date of the strike, which stoppage was and continued to be solely and directly attributable to the dispute. Thirdly, the claimant had lost his employment by reason of this stoppage of work.

It was further held that the claimant, although not a union member and paid by the piece rather than by the hour, had failed to discharge the burden of proof of entitlement to relief under Section 63(2). The fact of belonging "to another union or to no union did not make him automatically a party without an interest in the dispute". It is "ordinarily presumed that if the issue of the dispute . . . would directly affect the claimant's hours of work or wages (the union demanded in addition to increased hourly rates of wages, a reduced work week), he is directly interested" (CUB 85).

The employer's sending of letters of dismissal to the employees a month after the strike started, along with their holiday pay and pension credit

refunds, was not an end to the dispute but rather part of the employer's strategy, an expedient to influence their return to work or "only a subterfuge not infrequently used" (as in CUB 570). There was evidence that the employer did not intend the letter as a permanent separation or to cease operations. It was also noted that upon settlement, the employer requested all former employees to report for work, about 50% of whom did.

JURISPRUDENCE: CUBs 85 (quoted) and 570 (quoted) applied.

Followed in CUB 1521A.

Appeal of claimant dismissed.

May 14th, 1958 (Varied)

CUB 1515

ADJUDICATION PROCEEDINGS (Board of Referees—claimant present, examination of witness, majority decision credibility, Disqualification punitive, retroactive Evidence—benefit of doubt, burden of proof on administration and on claimant, employer responsibility, enforcement officer finding, statement after disqualification, weight of evidence, Interpretation).

CLAIMS MATTERS (Punitive Disqualification).

UNEMPLOYED (Available for full-time work despite employment, Employed, Family enterprise, Full working week, Proof, Retroactive disqualification, Suitable employment refused, Voluntarily left previously).

Sections 54(1), 57(1) and 65 of the Act

and

Sections 158(1) and (4) of the Regulations

A 28 year old single claimant had applied for benefit seven months after having resigned from employment as officer manager for three years with an oil company in Barrie, due to home responsibilities arising from his father's death. After seven months on claim, he was offered three weeks' employment as a postal helper during the Christmas holidays which he refused on the grounds of a series of dental appointments and of being required at home to help out at that time.

The claimant was disqualified under Section 59 for the period the employment would have lasted and under Section 54(2)a) as not available because his services were required at home; he did not appeal. A month later a statement was obtained from him by an enforcement officer from the local office to the effect he had been residing, since making claim, in the rural residence of his mother who owned and operated a gasoline service station and small confectionery store attached to the residence, at which he helped her in exchange for room and board only. The claimant was then disqualified retroactively to the beginning of his claim as not unemployed. The claimant appealed, stating, among others, that his mother had paid him a small wage in the four months preceding his claim and he had applied for benefit when the business no longer allowed her to do so. A disqualification under Section 65 was then imposed.

The board of referees dismissed his appeal, by majority decision, on the grounds the operation of the service station was dependent to a considerable degree on the participation of the claimant.

Upon appeal, it was held there was no reason to disagree with the board which had questioned the claimant closely. As the claimant's services

are normally performed for remuneration, his participation was in the nature of employment under the Act (CUB 1486). Although the evidence was insufficient to determine whether the claimant had worked a full working week as defined in Regulation 158(1), it was held he had failed to discharge the burden of proving his availability under subsection (4) of that Regulation. As regards the false statements that he was unemployed, the claimant "as an ordinary individual would have been justified in so regarding himself" (CUB 1481) and although his failure to disclose the duties he was performing at the gas station casts doubt in this regard, it was held it should be resolved in his favour and the disqualification therefore removed.

JURISPRUDENCE: CUBs 1486 and 1481 (quoted) applied.

Appeal of claimant dismissed under Section 54(1) and 57(1) and allowed under Section 65.

May 20th, 1958 (Reversed)

CUB 1516
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous, finding of fact, reversed, Disqualification procedure, Evidence—burden of proof, employer information, employment officer opinion, statement after Board of Referees, Jurisdiction of Umpire re aspect raised by adjudication).

AVAILABILITY (Domestic circumstances, Married Women, Prospects of employment, Restricted as to area and travel, Voluntarily left—just cause and ignored by Insurance Officer).

CLAIMS MATTERS (Married Women—employer's rule and reasonable opportunities of employment in locality of new domicile).

Section 161 of the Regulations

A 27 year old claimant left her one year's employment in Montreal as a dictaphone operator to get married a week later but her employer stated he would not have retained her as a married woman, even if she had requested it. She moved to take up domicile with her husband in a small community on the South shore served by the Three Rivers local office. To the local office query whether she would accept work as a dictaphone operator in Three Rivers if offered, she replied that it was impossible for her to commute there daily and that she wished employment which would not prevent her doing her housewife duties at the same time.

The claimant was disqualified as failing to meet the requirements of Regulation 161(3)a)v), in view of the local office opinion there were no opportunities for employment in her occupation in that locality. The board of referees unanimously affirmed her disqualification.

Upon appeal against the only disqualification imposed, it was held the claimant had met the requirements of subparagraphs (1) and (4) of Regulation 161(3)a) on the basis of the employer's rule against retaining married women and of the claimant's statement, following the board's decision, that there was a suitable bus service between her domicile and several large communities in the locality where there were reasonable opportunities of suitable employment (CUB 1103).

JURISPRUDENCE: CUB 1103 applied.

Appeal of claimant allowed.

May 20th, 1958 (Reversed)

CUB 1517

ADJUDICATION PROCEEDINGS (Board of Referees, examination of witnesses, majority decision—credibility, Commission's responsibility re claims procedure, Evidence—credibility, Interpretation).

CLAIMS MATTERS (Local Office Practices, Prescribed Manner of making a claim and proof).

Section 147 of the Regulations

A claimant was instructed, as inscribed in the claim booklet (UIC 501D) handed him at the time of making claim, to report back to the local office two weeks later and was told at the same time to secure his insurance book (from his railway company employer) and bring it to the local office immediately he received it. The claimant reported back to the local office only five weeks later when he had received the book, at which time he also completed weekly reports covering the intervening period.

The claimant was disqualified for not having made his continuing claim in the prescribed manner as required by Regulation 147 and his appeal was rejected by majority decision of the board of referees. The dissenting member of the board noted that the instructions on page 1 of the booklet, which pertained to the reporting date, contained the phrase "unless otherwise instructed", which the claimant took to apply by reason of the oral instructions given him re the insurance book's return.

Upon appeal, the claimant was deemed to have filed his continuing claim in the prescribed manner, on the basis of the evidence which showed that he had acted in good faith, the claimant's explanation being accepted that his failure to attend the local office was due to a complete misunderstanding of the instructions given him.

Appeal of claimant's union allowed.

May 20th, 1958 (Affirmed)

CUB 1518

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present, examination of witnesses, familiar with local situation, unanimous—finding of fact).

AVAILABILITY (While not fully Capable of work, Intention of claimant, Restricted as to duration).

CAPABLE (Availability affected, Separation in this connection, Suitability for employment likely to be offered).

Section 54(2)a of the Act

A 44 year old claimant was forced because of a leg injury sustained after working hours to take leave from his four months' employment as a labourer. On applying for benefit six weeks later he submitted a medical certificate to the effect he was fit for light work.

He was disqualified as not available because of his physical condition and because it seemed unlikely another employer would hire him for the short period before he returned to his regular employment. His

appeal was dismissed by a unanimous decision (rendered six weeks after he had returned to his job) of the board of referees.

Upon appeal it was held that the board, which is presumably aware of the local employment conditions and had the opportunity of questioning the claimant and his representative, had unanimously found the claimant to have restricted his availability for work to such an extent (3 weeks) that he could not be deemed available for work, and there was no reason to differ in the absence of any evidence to the contrary.

JURISPRUDENCE: Followed in CUB 1547.

Appeal of claimant's union dismissed.

May 23rd, 1958 (Reversed)

CUB 1519

(French)

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, reversed, Evidence—burden of proof, employer information, presumption, statements before disqualification, weight of evidence, Interpretation).

AVAILABILITY (While not fully Capable, Presumption of not available, Proof, Restricted as to duration).

CAPABLE OF WORK (Availability affected, Separation in this connection, Suitability for employment likely to be offered).

Section 54(2)a) of the Act

A claimant on applying for benefit stated he had had to leave his employment of eight years' duration a month previously to undergo an operation for stomach ulcers two weeks later, remaining in convalescence a week at the hospital and the last week at home. He submitted a medical certificate to the effect he could not perform his regular work till three months from the date of his claim but was available for "light" day work. Information secured from the employer revealed that the claimant continued to receive a portion of his salary under his employer's sickness benefit plan, retained his regular employment during his leave and finally could not accept other employment under penalty of losing his regular job and his indemnity.

The claimant was disqualified as not available but his appeal was allowed by unanimous decision of the board of referees.

Upon this decision being appealed, it was held the board, in finding the claimant available because no employment had been offered him, had displaced the onus of proof of availability which lies on the claimant under Section 54(2)a). In ordinary cases, the claimant's simple declaration is sufficient proof but it was held that, in the present case by reason of the particular circumstances of the claimant's leave and indemnity, there was a doubt so serious in this regard that the claimant could be considered available (in accordance with CUBs 960 and 1175) only from the date on which he would have proven that he had resigned from his regular employment, which he has not done.

JURISPRUDENCE: CUBs 960 and 1175 applied.

Appeal of insurance officer allowed.

June 4th, 1958 (Reversed)

CUB 1520

(French)

ADJUDICATION PROCEEDINGS (Board of Referees, majority decision—finding of fact and credibility, Evidence—burden on administration, employment officer opinion, medical certificate, statements before and after disqualification, Question of fact).

AVAILABILITY (While not fully Capable of work, Proof, Prospects of employment, Restricted generally as to hours, occupation, Voluntarily left—delayed claim).

CAPABLE OF WORK (Availability affected, Separation from employment in this connection, Suitability for employment likely to be offered).

Section 54(2)a) of the Act

A 24 year old single claimant, quit her employment after six months as a sales clerk because she was sick, incapable of work and suffering from violent headaches. She then applied for benefit six months later stating she was available for work three hours a day since a month previous; she submitted a medical certificate to the effect she could not perform her former work but nevertheless capable of light work.

The claimant was disqualified as not available for work because she was incapable of working a full day. The disqualification was affirmed by a majority decision of the board of referees on the basis of her later interview with the employment placement officer in which she would have declared she was only capable of work as a file-clerk or as a part-time (3 hours a day) spare cashier.

Upon appeal, it was held that, while availability for work is a question of fact which must be examined in the light of all the particular circumstances of a given case, the board had attached an exaggerated importance to the statement on interview without relating it to the claimant's earlier and later statements, all of which were to the effect she was available for any lighter full-time work, its error being all the more serious in view of the medical testimony in support. For this reason and particularly in the absence of any evidence on the state of the employment market in a city the size of Quebec with respect to lighter full-time work which the claimant was capable of doing and likely to accept, it was held the claimant had proved her availability.

Appeal of claimant allowed.

**June 4th, 1958 (Rehearing)
October 14th, 1958 (Affirmed)**

CUB 1521

CUB 1521A

(French)

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, Evidence—burden on claimant, irrelevant to decision, rules of evidence, Rehearing on Umpire's referral—new facts needed).

LABOUR DISPUTE (Attributable to, Conditions of employment, Directly interested, Financing, Participating, Proof, Relief, Shortage of work).

Sections 63 and 76 of the Act

The claimants were office workers who were laid off when their fellow production workers went on strike against their common employer to

enforce the various demands made by the union negotiating committee, consisting of a representative of each of these two sections of workers (and of other interested affiliated unions) along with their own union's general executive.

The claimants were disqualified under Section 63 and their appeal rejected by majority decision of the board of referees on the basis the claimants were interested and had participated in the labour dispute. The Umpire directed that a rehearing be held on all aspects of subsection 63(2), not only on facts which were or could have been known at the time of the board's first decision but also on those which were disclosed or which took place after that date. The board, this time unanimously, upheld the disqualification.

Upon appeal, it was held that the claimants had lost their employment by reason of a stoppage of work attributable to a labour dispute within the meaning of Section 63(1) of the Act. Furthermore it was held that, even though the union's original demand for a master collective agreement which would replace, on their respective expiry dates, the individual collective agreement with each local, was soon modified to a demand for a basic agreement on general policy only to be followed in negotiating individual agreements, the office-worker claimants could not be relieved of disqualification insofar as they had failed to prove (CUB 85) they fulfilled each and every one of the six conditions enumerated in Subsection (2) of Section 63.

It was held that they participated in the dispute by having in the first place unanimously, in a general meeting of their local, adopted motions endorsing the original proposal for an overall master agreement and other major demands; secondly, they had delegated one of their number to the negotiating committee and then finally during the subsequent negotiations they neither amended the mandate of their representative who attended the committee's sessions nor disassociated (CUB 981) themselves from the position taken by him. Furthermore they were directly interested in such dispute, inasmuch as the evidence shows the conditions of work (salary increases, social benefits) of the office workers were one of the subjects of negotiation in the dispute. From this it must be concluded their future working conditions could eventually be modified (as they were) by the outcome of the dispute; there was accordingly proof of direct interest (CUBs 156, 423, 528, 540, 622, 1121, 1142, 1147, 1309, 1385 and 1514).

The question of financing was left aside in view of the finding on the other two aspects and of the inadequacy of the information of record on this question.

JURISPRUDENCE: CUBs 85, 981 and (on direct interest) 156, 423, 528, 540, 622, 1121, 1142, 1147, 1309, 1385 and 1514 followed.

Appeal of claimant's union dismissed.

June 4th, 1958 (Rehearing)
October 14th, 1958 (Affirmed)

CUB 1522
CUB 1522A
 (French)

(SEE ALSO CUB 1521-1521A)

ADJUDICATION PROCEEDINGS (Interpretation).

LABOUR DISPUTE (Defined, Separate premises, Sympathetic Strike or lockout).

Sections 63 and 76 of the Act

The claimants were employees of a subsidiary (railway) company who were laid off for shortage of work arising from a strike by the production workers of the principal company.

Upon appeal against a unanimous decision of the board which reheard the case at the Umpire's direction under Section 76, it was held that the claimants were in the same position with respect to disqualifications under Section 63 as the office workers described in CUB 1521-1521A and for the same reasons set forth therein. They had been represented to the same extent on the union negotiating committee even though their union is separate and distinct, even as regards its provincial certification, from the union representing these other two groups of workers. Furthermore, it was held that the fact that they worked on separate premises for separately incorporated (and therefore distinct) companies does not make any difference so long as there was a dispute between themselves and an employer; not even necessarily their own, the board of referees having concluded that they were implicated in such dispute by reason of their direct interest and participation therein.

Appeal of claimant's union dismissed.

June 13th, 1958 (Rehearing)

CUB 1523

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present, Evidence—credibility, employer information, statement after board of referees, Rehearing on Umpire's referral, new facts submitted).

CLAIMS MATTERS (Married Women's Regulations).

VOLUNTARY LEAVING (Grievances raised with union and employer, Just cause, Proof, Suitability of employment given as reason, Tantamount to V.L., Working Conditions).

Sections 60(1) and 76 of the Act

and

Section 161 of the Regulations

A 34 year old married claimant voluntarily left her employment after 25 months as a grocery checker in a local store because of disagreement with her employer over the working hours. In addition to the extra 10 minutes at the close of each day agreed to by her union as a necessary condition for a 40-hour week, she had been working an extra hour every week without overtime compensation.

The claimant was disqualified under Section 60(1) for voluntarily leaving and also for having failed to establish her right to relief from

disqualification under Regulation 161 (married 17 months previous). These disqualifications were confirmed by majority decision of the board of referees.

The claimant, in her appeal to the Umpire, attached a copy of the labour contract which set forth, among others, the proper procedure for adjustment of grievances. The claimant contended that she had followed this procedure by first raising the matter with the store manager and then with her union. The union representative had then taken the matter up with the president of the company. Despite the latter's assurances, the situation had not been rectified. To that extent the claimant contradicted the majority finding of the board to the effect she had acted hastily and should have taken the matter up with her union and even the statement of its dissenting member to the effect that the claimant, having recently joined the organization, had not been fully aware of the procedure for contacting a union representative.

It was held that her statement in appeal was a new fact which either was not before or was not fully explored by, the board of referees to whom accordingly, the case was referred back for rehearing generally under Section 76 of the Act.

Appeal of the claimant to be reheard.

June 13th, 1958 (Reversed)

CUB 1524

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Disqualification, punitive, Evidence—benefit of doubt, credibility, employment history, presumption, weight of evidence).

UNEMPLOYED (Available for full-time work, Engaged on own account, Full working week part-time, Proof).

*Sections 57(1) and 65 of the Act
and*

Section 158(3) and (4) of the Regulations

A 38 year old claimant was laid off from three years' employment as a clerk in an accountant's office because his employer needed someone with wider accounting experience. He thereupon registered for employment as a chiropractor. Upon being interviewed by the local officer a short time later, it was established that he was listed in the telephone book under his own name and in the yellow pages as a chiropractor, that he subscribed to a telephone answering service, had a business telephone and maintained his licence to practise.

The claimant was then indefinitely disqualified as not unemployed on the ground he was engaged in business on his own account as a chiropractor and also under Section 65. Upon appeal the latter disqualification only was removed by the board of referees.

Upon further appeal it was considered that these facts, added to those stated in the decision of the board, would constitute a rather strong indication of full-time self-employment. However there was also evidence that the claimant, while regularly employed, had been practising as a chiropractor at patients' homes during evening hours, except for odd occasions during working hours when permission was granted by his employer, and that, during his employment, his chiropractic practice did not

amount to self-employment for a full working week. Therefore, in the absence of any evidence that there was a substantial change in the extent of his chiropractic activities once he became unemployed, the claimant was held to have proved he was unemployed in that the nature of his employment was such it would not have prevented him from accepting full-time employment (which he had found in fact six weeks after separation).

Appeal of the claimant allowed.

**June 17th, 1958 (Rehearing)
October 17th, 1958 (Affirmed)**

**CUB 1525
CUB 1525A**

ADJUDICATION PROCEEDINGS (Board of Referees, Claimant present, unanimous—credibility, Disqualification, punitive, Evidence, enforcement officer finding, oaths, rules of evidence, statements before and after disqualification and after board of referees, Jurisdiction re aspect not brought to appeal, Rehearing on Umpire's referral, new facts submitted).

UNEMPLOYED (Engaged on own account, Family enterprise, Farmers, Proof).

*Sections 54(1), 57(1) and 65 of the Act
and
Section 158(3) of the Regulations*

A claimant had been laid off from his 15 years' employment as a local hardware and lumber agent because of the low volume of business (the branch outlet being closed 10 months later). Nine months later he completed a statement for a district investigator of the Commission to the following effect. Upon separation he had moved to a large (480 acre) active farm owned by his wife (from her first husband) and had taken over its operation. While there was no agreement as to remuneration, he had shared the profits equally; there had been no help hired since he took over the farm. It was his intention to continue to make farming his main means of livelihood; he had not sought work since his separation and had not been available for work since the harvest, two months after his separation. Finally he had done most of the work himself, including six hours a day during the off-season.

The claimant was disqualified as having failed to prove he was unemployed since his separation. The board of referees unanimously disallowed his appeal. Several months later the insurance officer imposed a further disqualification, under Section 65, on the claimant for having incorrectly declared he was unemployed. On the basis of a later statement under oath submitted upon appeal to the Umpire, which contained new evidence on at least one of the main aspects of the case, namely, that the claimant had lived on the farm for the last six years rather than only since his separation, a rehearing under Section 76 was directed by the Umpire. The board of referees however, maintained its previous decision being of the opinion that it must accept the statement which the claimant had made originally as representing the true state of affairs and could not be influenced by his later statements in the matter.

Upon appeal, this unanimous finding was upheld as the case hinged on the credibility of the evidence. The disqualification under Section 65 was disregarded as not being before the Umpire inasmuch as it had not been dealt with by the board of referees at any time.

Appeal of claimant dismissed.

June 17th, 1958 (Reversed)

CUB 1526
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, reversed, Disqualification, joint and punitive, Evidence, medical certificates, statements before disqualification, weight of evidence).

AVAILABLE (While not fully Capable, Disqualification indefinite, retroactive and shortened Proof, Restricted generally, Suitable employment refused—disqualified only as N.A., Voluntarily left—delayed claim).

CAPABLE (Availability affected, Proof, Separation from employment in this connection, Sickness Benefit).

Sections 54(2)a) and 66 of the Act

A 46 year old married claimant, who had voluntarily left her employment of two years' duration, stated as her reason, when she applied for benefit seven weeks later and registered as a hand finisher in sewing, that she had been under doctor's observation and on the verge of a nervous breakdown. However, as shown by a medical certificate, she was then available for work providing it was in an occupation that was not too exhausting and would not necessitate her standing any length of time. Four months later she refused an offer of employment as a hand seamstress of buttons; she submitted two more medical certificates to the effect she was "presently unable to resume her work", her sickness had started a month before her separation and it was impossible to say when she would be able to resume her employment.

The claimant was disqualified retroactively to the date of her claim as not available for work as the facts submitted showed she had not looked for work; she was also disqualified several months later under Section 65 for having stated she was available for work. Upon appeal, the disqualification under Section 54(2)a) was removed by the board of referees for the period between the date of her separation and the date of her refusal of employment, on the grounds she was then capable of work.

Upon further appeal to the Umpire with respect to the period after the date of refusal, it was held that Section 66 should apply to such period as long as the claimant's incapacity lasted, inasmuch as the proof, as confirmed by the unanimous decision of the board of referees, established that the claimant had become incapable of work by reason of illness while she was entitled to receive benefit.

Appeal of the claimant allowed.

June 17th, 1958 (Reversed)

CUB 1527

ADJUDICATION PROCEEDINGS (Evidence—burden on administration, Interpretation of Act, Jurisdiction re aspect raised by adjudication but not brought to appeal).

AVAILABILITY (While Engaged on own account, Intention of claimant, Restricted generally, Retired from regular employment).

UNEMPLOYMENT (Available for full-time work, Engaged on own account, Family enterprise, Farmers, While on seasonal Leave, Voluntarily left previously).

*Sections 54(1) and 54(2)a of the Act
and
Sections 156, 158(3) and (4) of the Regulations*

A 40 year old married claimant, after 23 years, had left his employment as a baker, in the Spring on three months' leave of absence to enable him to arrange for transportation as his automobile was no longer serviceable. Upon investigation four months later, he declared he was the owner of 120-acre farm on which he resided since two years. He maintained 16 milking cows and 14 head of young cattle; in his later appeal to the board he stated that he and his son had started breeding pure-bred Jersey cattle as a hobby five years previously while employed as a baker and his son had been killed three years previous "leaving the care of the farm to him and his wife". His only crop was hay for his cattle. His income from milk for the past year was \$5,109. and his operating expenses had been \$6,527.75 of which \$1,046. had been for wages and \$3,305.39 for feed.

The claimant was disqualified as engaged on his own account in the operation of a farm within the meaning of Regulations 156 and 158(3). The board by majority decision upheld the disqualification.

Upon appeal, it was removed on the grounds that while the claimant did not appear to have sincerely tried to secure employment and such failure in many decisions had rightly been frowned upon, this was not a specific requirement of the Act. The best test of the claimant's availability for work would have been an offer of suitable employment which was not made. He was accordingly held to have met the requirements of Regulation 158(4) although it was pointed out that a disqualification for non-availability under Section 54(2)a) might well have fared differently.

JURISPRUDENCE: Referred to in CUB 1529.

Appeal of the claimant allowed.

June 17th, 1958 (Affirmed)

CUB 1528

(French)

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, Disqualification revision, Evidence—burden on claimant, presumption, statements after disqualification, Interpretation).

AVAILABILITY (Disqualification duration generally and shortened, Efforts to find work, Intention of claimant, Proof, Student—not directed and presumed un rebutted, direction later, Voluntarily left—joint disqualification but just cause).

Section 54(2)a) and 60(1) of the Act

A 29 year old claimant, left his employment as the manager of a creamery, after nine months, at his own request, stating that a work short-

age had necessitated the release of one employee and he had told the employer he wished to follow a six-month technological course at the out-of-town provincial Dairy School (9 A.M. to Noon and 1:30 P.M. to 4:30 P.M.). He further stated he was not prepared to leave the course for employment.

Upon being jointly disqualified for voluntarily leaving without just cause and for not being available, he then stated he would discontinue his studies in the event of an offer of employment and furthermore, that the course was one to which six weeks later the Commission had directed him under Section 57(3) of the Act. Upon appeal the disqualification for voluntarily leaving was removed by the board of referees. Upon appeal to the Umpire the disqualification for non-availability was removed by the insurance officer for the period after the date the direction to attend the course was issued.

The only question before the Umpire was accordingly that of availability from the date of claim. The claimant was held on the basis of the board of referees' unanimous decision and the established jurisprudence (CUBs 1189, 1246, 1249, 1324 and 1401) to not be available from the date of separation until the date he was directed to the course. The onus of proof was on the claimant who, in the absence of a direction under Section 57(3), attends a course on his own initiative, to prove his availability as any other claimant (CUB 1496). A strong presumption was created by his attendance at a full-time six-month course not easily to be interrupted, that his first intention was to follow the course. This presumption might have been rebutted by proof of sincere efforts to find work (CUBs 1246 and 1249) but was affirmed instead by the facts and the claimant's statements.

JURISPRUDENCE: CUBs 1189, 1246, 1249, 1324, 1401 and 1496 followed.

Appeal of the claimant dismissed.

June 17th, 1958 (Reversed)

CUB 1529

ADJUDICATION PROCEEDINGS (Board of Referees, *ultra vires*, unanimous—reversed, Disqualification procedure and revision, Evidence—burden on administration, Insurance Officer generally, Jurisdiction of Umpire re aspect raised by adjudication and not brought to appeal, Umpire, decision).

AVAILABILITY (Married Women, Presumption of non-availability, Prospects of employment, Restricted as to area, Suitable employment refused—joint disqualifications removed, Voluntarily left, just cause and ignored by Insurance Officer).

SUITABLE EMPLOYMENT (Availability, Change from usual area, Failure to apply, Good cause shown, Proof, Voluntarily left previous employment).

Sections 54(2)a), 59(1)a), 68 and 69 of the Act

A 30 year old married claimant had voluntarily left her employment in Cornwall after four years as a stenographer to reside with her husband in Espanola. Three months later she failed to apply for a position in continuing employment as a stenographer at Elliott Lake, which was offered her by the Sudbury local office.

She was disqualified under Section 59(1)a) and, upon appeal, was disqualified further by the unanimous board of referees, under Section 54(2)a), as not available on the grounds that she had restricted her employment to Espanola where opportunities of work for her were virtually non-existent.

Upon appeal to the Umpire the disqualification under Section 59 was removed, it being held that the claimant had had good cause for not applying. She had received, she contended without it being refuted, the local office's mailed notice of the opportunity of employment only after 11 A.M. on the very day the notice specified she should apply: the distance of 58 miles and the expenses involved made it reasonable to believe, in view of the wording of the notice, that it was useless to apply then.

In addition, the disqualification imposed by the board of referees under Section 54(2)a) was declared to be a nullity, being held to be beyond the powers of the board or ultra vires. The said question had been submitted to the insurance officer in accordance with Section 68 of the Act and no action had been taken by him pursuant to Section 69 (CUBs 1251 and 1308). Accordingly the question of availability was not strictly before the Umpire who might well (as in CUB 1527) have reached a different conclusion had it been.

JURISPRUDENCE: CUBs 1251 and 1308 followed and CUB 1527 referred to. Followed in CUB 1582.

Appeal of the claimant allowed.

June 20th, 1958 (Affirmed)

CUB 1530
(French)

ADJUDICATION PROCEEDINGS (Evidence—irrelevant to decision, Interpretation).

LABOUR DISPUTE (Defined, Attributable to, Conditions of employment, Existence of L.D., Incidents characteristic of L.D., Loss of employment, Merits irrelevant, Stoppage of work, Suitable employment refused, Union existence and membership).

SUITABLE EMPLOYMENT (Change from usual conditions, Conditions—contract of service, Good cause shown, Refusal, Union relations and rules).

Sections 59(1), 61 and 63(1) of the Act

The claimants had been employed in a shoe factory operated, among others, in partnership by a father and his sons. On the father's retirement, this partnership was dissolved during the period of the annual holidays when the factory closed down, and was replaced by a corporation owned by one of the sons and two of his own descendants. Thereupon, the claimants and their fellow-employees received, the same day, first a letter on the old firm's letterhead informing them of the partnership's dissolution and of the termination of the collective agreement under which they had been employed and secondly, a letter from the new corporation sent to all the employees, except the five or six officers of their union, asking them to report for interview next day. At this interview the employees were informed they could continue working at the shoe factory, provided they signed an individual contract of service to replace the original collective agreement. The employment at the factory did not resume until a month later when a collective agreement was signed between the union and the new corporation.

The claimants were disqualified under Section 63 but upon appeal were relieved thereof by the board of referees unanimously.

Upon appeal against this decision, it was held that, even though Section 63 deals only with employment, from which there was argued a distinction between "termination of a contract of service" and "termination of employment", the claimant had lost his employment upon the dissolution of the partnership. There could be no labour dispute because the claimant had not been employed by the subsequent employer and therefore, Section 63(1) could not apply. It was held furthermore that, regardless whether the terms of the individual contract were less favourable than the original collective agreement, the claimant had good cause within the meaning of Section 59(1) for refusing to accept the new employment because of the employer's insistence on having the claimant, who was a member of a recognized union (Section 61), sign an individual contract of service.

Appeal of the insurance officer dismissed.

June 20th, 1958 (Reversed)

CUB 1531

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—credibility and reversed, Evidence—burden of proof on claimant, claims record, credibility, statements before disqualification, Interpretation).

CLAIMS MATTERS (Punitive Disqualification).

EARNINGS (Reporting).

*Section 65 of the Act
and
Section 172 of the Regulations*

A claimant, following mass layoff at his plant, failed to declare, in his weekly report signed two weeks later, his earnings for the week during which layoff occurred, \$39.79, even though he was paid for this work only four days prior to reporting. This was discovered when the claimant reported his error and made retribution to the local office after being told at his employer's Supplemental Unemployment Benefit Office he could not be paid SUB until he rectified the discrepancy.

The insurance officer imposed a punitive disqualification under Section 65 for having incorrectly declared his earnings. The board of referees unanimously maintained it, on the grounds the claimant had been on benefit before and for this reason was familiar with the method of reporting earnings and therefore had not shown good cause for confusion on his part in this regard.

Upon appeal the disqualification was rescinded on the grounds that it was rather "an honest error", as contended by the union, in the light of the claimant's voluntary rectification of his error as soon as he became aware of it, an action for which he was commended by the board of referees.

Appeal of the claimant's union allowed.

July 11th, 1958 (Varied)

CUB 1532

ADJUDICATION PROCEEDINGS (Evidence—burden of proof, employer information, weight of evidence, Interpretation, Jurisdiction re aspect raised by adjudication, Umpire hearing).

LABOUR DISPUTE (Defined, Conditions of employment, Directly interested, Existence of labour dispute, Extension of labour dispute, Loss of employment, Participation, Picketing, Premises, Proof, Sympathetic strike, Violence, Voluntary Leaving).

SUITABLE EMPLOYMENT (Change from usual conditions, Conditions of employment—dangerous work, Labour Dispute involved, Refusal, Union relations and rules).

VOLUNTARY LEAVING (Described, Duration of Disqualification, Grievances, Just cause not shown, Labour Dispute involved, Proof—onus on claimant, Prospects of other employment not investigated beforehand, Tantamount to V.L., Union relationships, Working Conditions).

Sections 59, 60(1), 62 and 63 of the Act

In the course of a labour dispute in connection with the negotiation of new bargaining agreements between the employers of a given industry (pulp and paper) and all their respective employees, a strike was called. The original small picket line on each premises was later reinforced with a view to preventing any work being performed in connection with the particular employer's operations. Construction workers employed by building contractors and subcontractors on construction projects at the premises of the employer, upon being faced with a decision as to whether continuing to work was worth the risk of attempting to cross an unusually large picket line at the expense of likely impairment to interfraternal union solidarity, chose to respect the picket line. Accordingly they did not report for work.

The insurance officers disqualified the claimants under Section 63. Various boards of referees took varying views of the disqualification.

Upon appeal, the Umpire noted that subsection 63(3) should be read to mean that in cases where in the same enterprise several branches of work exist, a labour dispute which arises in one branch is not presumed to exist or to extend to any other branch and that this meaning applied with greater force in the present case where distinct employers were each carrying on, in admittedly separate (work) premises, autonomous undertakings unrelated to each other. It was held accordingly that the insurance officer had failed to discharge the onus of proof that a labour dispute existed at the premises at which the construction workers were employed. The construction workers had no dispute with their own respective employers, much less with the employers of the pulp and paper workers to whom they were strangers nor with the striking workers simply because of the latter's insistence on enforcing a picket line; the argument from a British decision to the latter effect was of very little value. It was held that stronger evidence was required than was disclosed in the record to show that the claimants' failure to cross the picket lines under the circumstances had extended the strikers' dispute to the construction workers' own separate places of employment (CUBs 1035, 1142 and 1201 distinguished).

It was held instead that the withdrawal of the construction workers by reason of the picket line constituted a voluntary separation from employment (the alternative applicability of Section 59 had been considered also) within the meaning of Section 60 of the Act for which they failed

to show just cause. The claimants had had reasonable cause for fear and been justified in pausing and taking precautions before venturing across the picket lines. The strikers had expressed a threatening attitude in their union's letter to the construction trades union four days before the strike: while the tradesmen would not be hindered from crossing the present picket lines to their construction work, the striking unions reserved the right to apply "more stringent" measures later. Also there had been a more or less sudden increase in the number of pickets and a seemingly unnecessary display of picket strength later. Furthermore, the construction workers had been left to exercise their own discretion to cross the picket line. Lastly, there had been scattered instances of threatening words. To that extent the claimant had been entitled to a day's delay to consider remedial action. Their decision to quit however, was reached with undue haste, as the evidence shows the original small picket lines were restored the day after they had been greatly increased. In the absence of any definite prospect of other work elsewhere (CUBs 259, 422, 429, 498, 698, 916, 847, 885, 946, 1030, 1086, 1100 and 1255), they had accordingly left without just cause (CUBs 201, 422, 429, 698, 727, 755 and 964).

Moreover, the claimant failed to exhaust every reasonable means—to which the same principles are applicable under Section 63 as under Section 60: taking reasonable means to exercise a legal right to work without obstruction from illegal picketing does not constitute a labour dispute as defined in Section 2(j)—of remedying such objectionable conditions pertaining to their work (CUBs 74, 124, 146, 201, 231 263, 436, 649, 785, 816, 964, 1029, 1086, 1090, 1100, 1150, 1188 and 1490), before deciding to leave and thereafter as often as required. For instance, by urging the union and if necessary, their employer (from whom the evidence shows assistance either was or would have been forthcoming) to remedial measures or (as stated in CUBs 1109 and 457) by having ultimate recourse as has sometimes been had to police protection and legal proceedings.

The disqualification under Section 60(1) was limited to a period equivalent to that during which the work reckoned according to the specific trades would but for the general cessation of employment have probably endured but in no case to exceed six weeks.

It was further held that the claims of maintenance electrical workers who were employed by one of the struck employers under a collective agreement which was separate and distinct from that which he had with the striking workers and who, since the strike started, had supplied, in virtue of a prior arrangement between the employer and the striking unions, one electrician per shift for indispensable needs, until the strikers' picket line was reinforced, passage was made difficult and the employer told them it was useless and unnecessary to report for work any longer, were not subject to disqualification because it was satisfactorily established that their cessation of work was primarily, if not entirely, due to the action of their employer.

CUB 1386, on which the claimants' union representatives relied, was based on very different facts and also could not afford any of the present claimants any relief from Section 63. The claimants in CUB 1386 had been working for the struck employer and at the same premises as the strikers, the two groups of employees had been jurisdictional rivals for a long time and the degree and danger of violence was well established. Finally the claimants' union in that case took effective measures to resume their

employment, to wit, affiliation with a large respected international federation which made representations to the municipal council and the struck employer as a result of which injunctions were issued ending the illegal picketing; such remedial action was the best proof of non-participation and of a genuine desire to resume work.

The present decision was applied also to another group of construction workers who lost their employment when construction projects on the premises of a struck employer (Imperial Oil Co.) were suspended as a result of the claimants' refusal to cross the formidable picket line set up by his striking employees, though the justification for a fear of violence was, according to the evidence, weaker than in the pulp and paper cases. Even if these claimants were given the benefit of doubt regarding a genuine fear of violence by reason of the picket line alone, they failed to take reasonable means to bring about the removal of their cause of fear.

JURISPRUDENCE: CUBs 1035, 1142, 1201 and 1386 distinguished, CUBs 457 and 1109 referred to, CUBs 259, 422, 429, 498, 698, 916, 847, 885, 946, 1030, 1086, 1100, 1255, 201, 727, 755, 964, 74, 124, 146, 231, 263, 436, 649, 785, 816, 1029, 1090, 1150, 1188 and 1490 followed. Distinguished in CUB 1623.

Appeal of the insurance officer allowed, except in the case of the maintenance electrical workers, and appeals of the claimants' unions dismissed, though under Section 60 rather than Section 63.

July 16th, 1958 (Varied)

CUB 1533

ADJUDICATION PROCEEDINGS (Interpretation).

LABOUR DISPUTE (Defined, Attributable to L.D., Directly interested, Duration, Existence of Labour Dispute, Incidents characteristic, Insistence & resistance, Merits irrelevant, Misconduct, Stoppage of work, Termination of disqualification, Union existence, Working conditions).

Section 63 of the Act

Following the layoff of 21 hourly rated employees and the interdepartmental transfer by the employer of other employees as a result, the hourly rated employees insisted on holding meetings upon the premises on company time and without management's permission. These meetings were in connection with their grievance that the employer had not made the transfers in accordance with the seniority clause of the bargaining agreement covering hourly rated employees. The employer reacted in the first instance by a one-day suspension of operations and in the second instance, by a two-day suspension and finally on the third occasion, 7 days since the first meeting, by shutting down the plant indefinitely.

The claimants were disqualified under Section 63. The board of referees maintained the disqualifications by majority decision.

Upon appeal, it was held that the resultant stoppages of work were attributable to a labour dispute in view of the demonstrated insistence and resistance of the two parties. The fact that the stoppage was due to the employer's action did not make it less a labour dispute (as held in CUBs 570 and 1142) if such action was taken in consequence of the workers' unwillingness to agree to his demands. The merits of the dispute, on the ground that management had later admitted that the employees

should have been only reprimanded instead of dismissed, were irrelevant since the action had resulted in stoppages of work (CUBs 570, 827, 870, 890 and 1142).

It was held further that the claimants, having lost their employment within the meaning of subsection 63(1) and obviously being directly interested in the dispute, were properly subject to disqualification until the termination of the work stoppage. Excepted from disqualification was the three-week period commencing a month after the labour dispute, during which the plant was officially closed down for reasons independent of the dispute, i.e., vacation purposes, as shown by the payment of vacation credits to the salaried employees.

JURISPRUDENCE: CUBs 570, 827, 870, 890 and 1142 followed.

Appeal of the claimant's union dismissed except as regards three weeks' vacation period.

August 6th, 1958 (Affirmed)

CUB 1534

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, Disqualification indefinite, Evidence—burden on claimant, employer information and responsibility, irrelevant to decision, statement after disqualification, Interpretation, Question of fact).

UNEMPLOYED (Available despite engagement, Employed, Engaged on own account, Farmer, Off-season unemployment, Proof, Voluntarily left previously).

*Sections 54(1) and 57(1) of the Act
and*

Sections 156(a) and (b) and 158(4) of the Regulations

A claimant had been last employed five months previous to claim for a period of four months as a sawmill labourer in British Columbia and had voluntarily left such employment to return to his home in a remote rural area in Saskatchewan where he owned and operated a 240-acre grain farm. He carried out on it the seeding, summer fallowing and harvesting during the period between voluntarily leaving and the commencement of the off-season when he applied for benefit.

He was disqualified as not unemployed and his appeal was dismissed by a unanimous board of referees.

Upon appeal it was held that whether a claimant is "employed on his own account in the operation of a farm" to the extent required by Regulation 156 is entirely a question of fact and that the evidence shows the claimant to have been so employed. While the claimant's actual work on the farm might have been so limited in extent that it would not have prevented him from accepting full-time employment from the time he applied for benefit, to wit, the commencement of the off-season, it was considered unnecessary to adjudicate thereon unless the claimant could prove he had the thirty contribution weeks referred to in Regulation 156(b). The records showed he had only twenty contribution weeks during the two previous off-seasons. The claimant's statement that he had worked approximately $4\frac{1}{2}$ months in the second last off-season for an employer who had not placed any stamps in his insurance book, was held to have no effect on the conclusion, as it might have, if he had seen fit to file a non-compliance report against that employer.

Appeal of claimant dismissed.

August 6th, 1958 (Reversed)**CUB 1535**

ADJUDICATION PROCEEDINGS (Board of Referees, familiar with local situation, majority decision—credibility, Disqualification punitive, Evidence—burden of proof on administration, presumption, statements after disqualification).

CLAIMS MATTERS (Prescribed manner of making proof in weekly reporting, Punitive disqualification).

EARNINGS (Reporting).

Section 65 of the Act

A claimant, following his regular summer layoff, failed to declare, upon reporting at the local office in the following week for the week during which he was laid off, earnings for the four days of that week.

He was subsequently disqualified under Section 65 for having incorrectly declared his earnings. The board of referees upheld the disqualification by majority decision, on the basis of the claimant's considerable experience in claiming benefit as an employee of an automobile manufacturing company for 17 years.

Upon appeal, it was held that the claimant had been in good faith; this was supported by his statement, which had not been denied, to the effect that an employee of the local office had at the time of reporting informed him that the benefits he had received that week covered benefit for that week and not the week previous.

Appeal of the claimant (represented by the union) allowed.

August 6th, 1958 (Reversed)**CUB 1536**

ADJUDICATION PROCEEDINGS (Evidence—benefit of doubt).

AVAILABILITY (Antedate involved, Intention of claimant, Proof).

CLAIMS MATTERS (Antedate—conditions of entitlement, good cause for delay shown, Local office practices).

*Sections 46(3) and 54(2)a) of the Act
and
Section 150 of the Regulations*

A claimant who had been temporarily laid off on December 20th, applied 10 days later to have his claim antedated to cover the period from December 22nd to December 27th inclusive. He gave as the reason for his failure to file claim on December 28th as directed, the fact he was doing voluntary work altering a classroom for retarded children on the morning of that day, a Saturday. He had been committed to this work prior to the Commission's assignment of Saturday as his day for reporting to the local office.

His application was refused and this was confirmed by majority decision of the board of referees.

Upon appeal, the claimant's application for antedate was allowed, subject to a one-day disqualification as not available for work on the Saturday in question. It was held that the difference between the claimant who reported on a Monday and his fellow employees who reported on the Saturday just previous was a mere technicality, they being

given the benefit of doubt as to their actual availability for work during the week ending that Saturday. Furthermore, the arrangements for reporting on the Saturday had been made chiefly to suit the convenience of the local employment office and the claimant had no reason to know, in view of his explicit instructions, that he could have reported under the circumstances, on a day prior to that Saturday.

Appeal of claimant's union allowed.

August 6th, 1958 (Reversed)

CUB 1537

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Evidence—burden on administration, employment history, presumption, statements after disqualification, weight of evidence, Insurance Officer, generally).

EARNINGS (Business on own account, Determination of, Net earnings, Proof).

UNEMPLOYED (Available for full-time work, Engaged in business on own account, Proof, Subsidiary, Voluntarily left previously).

*Sections 54(1), 56 and 57(1) of the Act
and*

Sections 158(3) and (4) and 172(2) and (3) of the Regulations

A single claimant registered for employment as an industrial nurse stating she had worked as a health counsellor for a railway company for almost five years until five months previously when she had resigned on the ground she had been an industrial nurse long enough and wished to better herself and be a health counsellor thereafter. In the meantime she had continued to work for the same employer two hours a day five days a week after resigning until shortly before applying for benefit. She stated further that she was a publisher of a magazine in the industrial health field which she had started herself over a year previous, its sixth issue appearing in the month she filed claim.

Accordingly she was disqualified as not unemployed in that she was engaged in business on her own account.

With the consent of the claimant, her appeal was heard by only two members of the board of referees; the board affirmed the disqualification.

Upon appeal, it was held that inasmuch as the claimant had been publishing the magazine while working elsewhere on a full-time basis and the evidence also showed she was willing, desirous and able to continue to work on the same basis while publishing the magazine, the nature of her self employment was not consequently such as to have prevented her from accepting full-time employment in any one of the weeks since her application for benefit. As regards the claimant's continuing obligation, despite the above finding, to report her earnings from what was a business undertaking in the sense it was carried on for the purpose of gain, it was held that the claimant's various statements must be accepted, even though they did not constitute a detailed account of her business operations, as satisfactory proof she had no net earnings within the meaning of 172(3), as these statements had not been questioned at any time.

JURISPRUDENCE: Followed in CUB 1566.

Appeal of the claimant allowed.

August 7th, 1958 (Affirmed)

CUB 1538

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact).

AVAILABILITY (While not fully Capable of work, Restricted as to duration and occupation, Temporary non-availability).

CAPABLE OF WORK (Availability affected, Separation from employment in this connection, Suitability for employment likely to be offered).

Section 54(2)a) of the Act

A 55 year old claimant became temporarily separated from his employment as a railway yard foreman in Winnipeg in order to undergo an operation on one of his legs. Upon applying for benefit a month later, he submitted a medical certificate to the effect he was now fit for light work only and that he should be fully capable in four to six weeks' time.

He was disqualified as not available for work within the meaning of Section 54(2)a). This was maintained by unanimous decision of the board of referees (which followed CUB 1323).

Upon appeal, it was held that there was no alternative but to agree with the unanimous board, in view of the many restrictions affecting the claimant's employability such as the lighter type of work he could perform (he registered for employment as a taxicab starter and said he would be capable of performing work as telephone order clerk, as it did not involve standing) and the necessary limited period of time—approximately seven weeks—he was available for such work before returning to his regular employment.

JURISPRUDENCE: Applied in CUB 1607.

Appeal of the claimant's union dismissed.

August 7th, 1958 (Reversed)

CUB 1539

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Evidence—benefit of doubt, credibility, medical testimony, weight of evidence).

AVAILABILITY (Domestic circumstances, Efforts to find work (not shown), Pregnancy, Proof. Suitable Employment (not) refused, Voluntarily left in first place—delayed claim).

Section 54(2)a) of the Act

A 19 year old married claimant voluntarily left her four months' employment as a lumber grader, because of pregnancy. Her baby was born 3½ months later, and seven weeks thereafter, she registered for employment as a sales' clerk. She informed the local office that her mother-in-law would care for the baby if she obtained work and, though nursing her baby, she would put her on bottle-feeding.

The claimant was disqualified as not available and the board of referees unanimously rejected her appeal.

On further appeal, the claimant was given the benefit of doubt in the light of her statement that the transfer to bottle-feeding could have been

accomplished at once and her doctor's corroboration that the changeover involved only one day. There would have been no doubt of the claimant's availability if there had been any evidence that she had made an effort to secure work on her own initiative as proof of her good faith in this regard. However, the best test of a claimant's availability for work remains an offer of suitable employment and no such offer was made or refused in this case.

JURISPRUDENCE: Applied in CUB 1552.

Appeal of the claimant allowed.

August 7th, 1958 (Reversed)

CUB 1540

(French)

ADJUDICATION PROCEEDINGS (Evidence, burden on administration, credibility, employer information, statements before and after disqualification, weight of evidence).

AVAILABILITY (Domestic circumstances, Intention of claimant, Proof, Prospects of employment, Restricted as to occupation, overtime and travel, Suitable Employment refused—joint disqualification removed).

SUITABLE EMPLOYMENT (Availability, Change from usual conditions, Conditions—overtime and travel, Domestic circumstances, Duration of unemployment long, Good cause shown, Proof, Prospects of return to former employment).

Sections 54(2)a) and 59(2)b) of the Act

A 43 year old married woman had worked as a clerk an average of 4½ months during the past four years in temporary employment for the Income Tax Department, Montreal. Upon termination of her last employment at the end of June and exhaustion of her regular benefit credits by the end of October, she had established, upon filing a new Initial claim on the 17th of December, a seasonal benefit claim. The same day she refused an offer of temporary employment in the same occupation but with the Department of Finance, at \$1.00 an hour, which was expected to last six months and which entailed overtime work at the employer's request.

The claimant was disqualified under Sections 59 and 54(2)a). The board of referees upheld both disqualifications by majority decision.

Upon appeal, the disqualification under Section 59(2)b) was removed on the grounds that the employment was not suitable in view of the obligation, confirmed by the employer, to perform overtime work other than on an intermittent or exceptional basis. The indefinite disqualification as not available for work would have been affirmed without hesitation had the claimant's comments with respect to having to travel to such work (45 minutes by train at a cost of .50¢ a day) clearly indicated she refused to travel. However it was removed inasmuch as it seemed to be based solely on the claimant's statement that she was not available by reason of domestic circumstances, from 6 P.M. on; particularly was this so in the absence of any reasonable proof that there were no immediate prospects of employment in her usual occupation at the hours she wished, and of further proof that she would not have been ready to accept any other type of work even if it did not entail working after 6 P.M.

Appeal of the claimant allowed.

August 8th, 1958 (Affirmed)**CUB 1541**

ADJUDICATION PROCEEDINGS (Board of Referees, familiar with local situation, unanimous—finding of fact, Evidence—burden of proof on claimant, weight of evidence, Question of fact).

AVAILABILITY (Circumstances deliberately created, Proof, Prospects of employment, Restricted as to hours, Student—not directed and presumed non-availability not rebutted, intention re work, Voluntarily left—delayed claim).

Sections 54(2)a) and 57(3) of the Act

A claimant had left his home-town employment as a pharmacist apprentice from April to September 21st, voluntarily, in order to attend classes at the provincial University from 8:30 a.m. to 12:30 p.m. Upon filing an initial claim on November 25th, he was considered available in view of the employment office's report there was a reasonable possibility of suitable employment during the busy season prior to Christmas; in fact, he did find full-time employment in his home-town for two weeks commencing December 23rd.

The claimant was disqualified as not available for work from January 26th on. The board of referees unanimously affirmed the disqualification.

Upon appeal, the claimant was held to be not available. He had not been directed to attend the university by the Commission under Section 57(3). Accordingly his availability had to be decided in the light of the principles which applied to claimants generally and to be examined (as in CUB 1138) in the light of the claimant's intentions and mental attitude towards accepting employment while attending the course and of his prospects of employment in respect to the new set of circumstances which he had deliberately created. The board of referees, aware of the conditions of the labour market, had unanimously concluded that the claimant had restricted his availability (CUBs 1138, 1154 and 161) to hours in which there was no reasonable opportunity of obtaining work. This was a pure question of fact on which there was no contrary evidence, the onus of which lies on the claimant.

Appeal of the claimant dismissed.

August 11th, 1958 (Reversed)**CUB 1542**

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Interpretation).

LABOUR DISPUTE (Defined, Attributable to Labour Dispute, Conditions of employment, Duration, Insistence and resistance, Stoppage of work, Voluntary leaving).

VOLUNTARY LEAVING (Labour Dispute Involved).

Sections 60(1) and 63 of the Act

In the course of a province-wide strike in the pulp and paper industry, the wood operations of a given company were temporarily suspended and then resumed on the basis of limited cutting. For this purpose, some 20 regular fallers and some 20 other men who normally worked at other jobs, were engaged at \$2.16 per hour. Several weeks later a disagreement arose between the employer and these employees; the

union contended that the workers were being paid the daily rate provided in the master agreement in force at the time for right-of-way falling and snag falling and that this was considerably lower (50%) than the average earnings for (production) falling and bucking. This disagreement resulted in the 40 fallers refusing to continue with their work until an interim agreement was reached nine days later proscribing production falling for the time being; the 85 other workers remained in employment during this interval and no picket line was established.

The claimants were disqualified under Section 63 for the duration of the stoppage. The board of referees, by unanimous decision, removed the disqualification on the grounds the claimants instead had voluntarily left and had had good cause for doing so.

Upon appeal, it was held that there was a labour dispute within the definition of Section 2 (j) of the Act. Furthermore, it had resulted in an appreciable stoppage of work; though of short duration and any deficiency in falling operations was remediable later, all those engaged in falling operations were involved and these operations had been brought to a standstill for a period which in point of time had extended over a week (CUBs 751, 1147 and 1151). Accordingly, a disqualification under Section 63(1) was proper, although resort to Section 60(1) (as per the board of referees) might well have been justified if the stoppage had not been appreciable, that is to say, not en masse, for instance, if only one or two selected members of the group had left their employment and filed benefit claims to test the disputed points.

JURISPRUDENCE: CUBs 751, 1147 and 1151 followed.

Appeal of the insurance officer maintained.

August 11th, 1958 (Affirmed)

CUB 1543

November 21st, 1958 (Rehearing directed)

CUB 1543A

ADJUDICATION PROCEEDINGS (Board of Referees, majority decision—credibility, Disqualification punitive, Evidence, burden on claimant, enforcement officer finding, presumption, statements before and after disqualification and after Board of Referees, Rehearing on Umpire's referral—new facts submitted).

UNEMPLOYED (Available (not) for full-time work, Contract of service, (no) Earnings, Employed, Engaged on own account, Family enterprise, Proof).

*Sections 54(1), 57(1), 65 and 76 of the Act
and*

Sections 158(3) and (4) of the Regulations

A 36 year old married claimant, six months after being laid off from employment in the town of Preston, Ontario, and registering as a machine shop labourer, was found, upon investigation by an enforcement officer of the Commission, to be in charge of a lunch counter operated on the premises of a bowling alley establishment. The hours of operation were from 9:30 a.m. until the end of the bowling about midnight; a part-time girl was hired to help on Monday and Wednesday nights and the claimant's wife handled the counter on Tuesday and Thursday nights. The claimant stated that in the event of steady work he would either hire someone to run the bar in the day time or just operate it at night. He declared at

the same time that it was his wife, rather than himself, who a month after his layoff, had rented the snack bar and been operating it ever since, this despite having five children at home and being in a pregnant condition, and that he had received no wages in connection with such work.

The claimant was disqualified retroactive to the beginning of the month in which the snack bar had been taken over on the grounds he has failed to prove that he was unemployed in that he was engaged in business on his own account. Subsequently the insurance officer imposed a disqualification under Section 65 for false statements regarding unemployment. The majority of the board upheld the first disqualification on the basis that as all the business arrangements had been by oral agreement and the ownership had not been established in the wife's name, the snack bar was a joint enterprise; the disqualification under Section 65 was rescinded by the board.

Upon appeal, it was held that the evidence showed not only that the claimant's participation in the operation of the bar was necessary but that under the circumstances and taking into account the claimant's prolonged failure to acquaint the local office with such activities, the claimant was considered to have failed to discharge the onus of proving he was unemployed, regardless whether he was employed under a contract of service or was the owner of the snack bar.

The claimant later submitted additional information which he considered of material importance, to wit, that a month after the snack bar was taken over, he had stated to the interviewing officer, in the course of reporting for benefit, that his wife operated a small business and as evidence of his desire to obtain work, he had accepted work in Hamilton later; the only time he had looked after the snack bar during the day was when his wife became pregnant and on occasion when she wished to do laundry work at home. The Umpire, without attempting to pass upon the reliability or merit of the new facts, and since it was possible that on the strength of them the board might reach a different conclusion, directed under Section 76 that the case should be reheard and reconsidered generally.

JURISPRUDENCE: Followed in CUB 1566.

Appeal of the claimant dismissed but rehearing later directed on new facts.

August 11th, 1958 (Affirmed)

CUB 1544

MISCONDUCT (Insubordination, Relations with supervisors, Voluntary leaving alternatively).

VOLUNTARY LEAVING (Change in occupation's duties, Grievances raised with employer and union, Haste, Just cause not shown, Misconduct alternatively, Tantamount to V.L., Working conditions).

Section 60(1) of the Act

A 59 year old single claimant had been employed as a sweeper by a carpet manufacturing company for a period of 2½ years, when he was laid off. He had refused, after being given a day to change his mind and after taking his grievance to his union, to comply with the employer's instructions that he sweep out in future the washrooms in his area several

times a day, on the grounds it was not part of his duties. Following negotiations by his union, as a result of which it was agreed the job content would specifically include in future the duties he had objected to, he was reinstated by the employer.

He was disqualified under Section 60(1). The board of referees confirmed the disqualification by majority decision.

Upon appeal, the claimant was held to have been too hasty in his decision to not comply with his employer's instructions and to not continue in employment until such time as his complaint against his employer had been aired. His refusal to continue, in the absence of any evidence that so continuing would have created undue hardship to him, was considered unjustifiable under the circumstances. Whether his separation was due to misconduct or amounted to voluntary cessation of employment, a disqualification under Section 60(1) was therefore held to be in order.

Appeal of the claimant (represented by union) dismissed.

August 11th, 1958 (Reversed)

CUB 1545

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—credibility, reversed, Evidence—medical certificate, statements after disqualification, Insurance officer, re-examination after decision, Jurisdiction of adjudicating authority re aspect raised by adjudication).

AVAILABILITY (While not fully Capable of work, Disqualification retroactive, Intention of claimant, Proof, Restricted generally, Suitable Employment refused—joint disqualification).

CAPABLE OF WORK (Availability affected, Proof, Sickness Benefit, Suitability for employment offered and refused).

SUITABLE EMPLOYMENT (Availability—joint disqualification, Change from usual wage rate, Good cause shown, Prospects of return to former work, Suitability of offer—health).

Sections 54(2)a), 59 and 66 of the Act

A 41 year old widowed claimant who had been temporarily employed as a typist at \$48.56 a week, from December 1st to December 21st, refused an offer made on January 15th of employment with the local employment office for about three months as a clerk-typist at \$1.00 an hour for a 37½-hour week. She gave as grounds firstly, she was undergoing medical treatment and her doctor had requested her to rest until May so as to be in good health if she obtained steady work and secondly, that the wages were lower than those she had received in her second last previous employment (with the C.N.R.).

She was disqualified under Section 59 and retroactive to the date of claim as not available under Section 54(2)a). The board of referees unanimously upheld the two disqualifications.

Upon appeal, the disqualification for non-availability was removed on the grounds that although the nature of the claimant's illness was such as to indicate it arose from a gradual internal growth over several months, there had been no question of her health in the two employments she had had during the several months prior to her separation; the evidence

(medical certificate) indicated that until she hemorrhaged on December 30th, she had been quite capable of working. Her readiness to forego rest and medical treatment for the purpose of accepting the offer rather than risk disqualification indicated her honesty of purpose. It was held that the claimant, if she had become entitled to receive benefit previously to becoming incapable of work and otherwise had continued to be so entitled, was, by virtue of the provision of Section 66 of the Act, relieved from disqualification under Section 54(2)a), and for so long as she remained totally incapacitated by reason of her illness. This was a matter to be verified by the insurance officer as the claim information was not contained on file.

The disqualification under Section 59 was removed on the grounds the claimant's refusal of the employment offer was for good cause as the claimant had become no longer capable of work having to undergo a hysterectomy two weeks later.

Appeal of the claimant's union allowed.

August 12th, 1958 (Reversed)

CUB 1546

ADJUDICATION PROCEEDINGS (Board of Referees, majority—credibility, Commission's responsibility re claims procedures, Evidence—benefit of doubt, credibility).

CLAIMS MATTERS (Antedate—good cause for delay shown, Local Office Practices, Prescribed manner of making a claim)

EARNINGS (Allowable, Holiday Pay).

*Section 46(3) of the Act
and
Section 150 of the Regulations*

A claimant, after renewing his claim in February following lay-off, applied a month later to have his renewal antedated to December 22nd so as to cover the period from December 24th to 28th. He stated he had delayed applying because he had believed the pay he received in that week for one day's work and three days' holidays constituted earnings for the purposes of benefit. These being in excess of those allowable, he had not believed he would be entitled to benefit and for this reason had not filed a claim for benefit at that time.

The application for antedate was refused, in the case of the board of referees, by majority decision.

Upon appeal, the claimant was held to be entitled to the benefit of doubt as having shown good cause for his delay in applying, and accordingly entitled to antedate his claim even though technically he should have filed it earlier. His omission was, at least to a substantial degree, attributable to the erroneous information obtained from the local office and conveyed to him by fellow-employees whom he had no particular reason to distrust.

Appeal of the claimant's union allowed.

August 12th, 1958 (Affirmed)**CUB 1547****ADJUDICATION PROCEEDINGS** (Board of Referees, familiar with local situation, unanimous—finding of fact).**AVAILABILITY** (While not fully Capable of work, Disqualification indefinite, Intention of claimant, Prospects of employment, Restricted generally and as to duration, light work and occupation, Voluntarily left—disqualification only as not available).**CAPABLE OF WORK** (Availability affected as a result, Proof, Separation from employment in this connection, Suitability for employment likely to be offered).*Section 54(2)a) of the Act*

A 42 year old married claimant who had been employed as a coal miner, injured his foot while off duty the day the mine shut down. On returning two weeks later, when it re-opened, he quit after four days because the heavy miner's boot made the foot swell; he submitted a medical certificate that he had a bruised left foot.

The claimant was disqualified indefinitely as not available from the date of his claim because he could only do light work as a fireman, a former occupation. The board of referees unanimously upheld this decision.

Upon appeal, it was noted that the claimant's chances of finding employment in his home area of the type for which he was capable were, as unanimously found by the board of referees, practically non-existent, despite his disability not being noticeable in the absence of any limp. In view of the very short period of time that he would have been available for work in his limited capacity (two to three weeks), the claimant was held to have been properly disqualified (CUB 1518).

JURISPRUDENCE: CUB 1518 followed. Applied in CUB 1607.

Appeal of the claimant dismissed.

August 12th, 1958 (Affirmed)**CUB 1548****ADJUDICATION PROCEEDINGS** (Interpretation, Jurisdiction of Umpire re policy and legislation).**CLAIMS MATTERS** (Contributions and Rate of Benefit).**EARNINGS** (Allowable).*Section 47 of the Act*

A 32 year old single claimant applied for benefit after having worked for twelve days during the Christmas season as a postal sorter at \$1.00 an hour; and prior to this, from February to May, he had worked in the same capacity at \$1.16 an hour. He established a weekly benefit rate of only \$11.00, on the basis that his most recent thirty contributions amounted only to \$8.64. He thereupon queried the local office in that a year previous his weekly benefit rate had been \$21.00 a week (these payments had been discontinued upon his becoming employed at the local post office from 6 P.M. to 10 P.M. though working only three hours most evenings). Upon the local office's explanation that his weekly benefit rate was low because his work at the post office had been on a part-time basis only, he appealed to the board of referees.

The board rejected his appeal by majority decision. The dissenting member was of the opinion that the Umpire could make a recommendation that a claimant who accepted a position at a rate of pay lower than his weekly benefit should be permitted to revert to his former rate as though he had worked in excepted employment. This would place him in the same position as a continuing claimant who was entitled to the difference between his earnings and his weekly rate of benefit.

Upon appeal on the basis of this dissenting opinion, the Umpire held that the weekly rate of benefit was in accordance with Section 47 of the Act and it was not within his province to make the suggested recommendation.

Appeal of the claimant dismissed.

August 12th, 1958 (Reversed)

CUB 1549

ADJUDICATION PROCEEDINGS (Board of Referees, majority—credibility, Commission's responsibility re claims procedures, Evidence, burden on claimant, credibility, statements after disqualification, Jurisdiction of adjudicating authority re aspect raised by adjudication).

AVAILABILITY (Absence from Local Office area, Antedate, Disqualification retroactive).

CLAIMS MATTERS (Antedate—good cause shown, Local Office practices, Prescribed manner of making a claim and reporting).

*Sections 46(3) and 54(2)a) of the Act
and*

Section 150 of the Regulations

A claimant, on filing an initial application on December 30th after temporary lay-off on December 20th, applied for antedate to cover the period from December 22nd to December 27th. He first gave as his reason for failing to report on the Saturday, December 28th as directed, his absence from town that day, on Christmas holiday.

His application for antedate was refused. The claimant then stated, upon appeal to the board of referees, he had been absent in order to visit 100 miles away his ailing father and attend to some business matters at the latter's behest as well as participate in a family gathering the day following, a Sunday.

The board confirmed the refusal by majority decision.

Upon appeal, the claimant was held to be entitled to the antedate as the difference between filing Saturday with his fellow employees instead of the Monday following was a mere technicality. The claimant could and would have filed his claim on a much earlier date, namely, during the week commencing December 19th, but for the arrangements as to reporting made by the L.O. chiefly to suit its own convenience. The claimant however was disqualified as not available for work on the Saturday in question.

Appeal of claimant's union allowed but not available for one day.

August 12th, 1958 (Rehearing)

CUB 1550
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, familiar with local situation, unanimous—credibility, Commission's responsibility re adjudication procedures, Evidence—burden of proof on administration and on claimant, contributions record, employer information, statements before disqualification and after board of referees, Insurance Officer—general, Interpretation, Rehearing on Umpire's referral—new facts submitted and new facts needed).

UNEMPLOYED (Available for full-time work, Engaged on own account, Family enterprise, Farmers, Off-season unemployment, Proof).

*Sections 54(1), 57(1) and 76 of the Act
and*

Sections 156 and 158(3) & (4) of the Regulations

A 35 year old married claimant, upon being laid off for shortage of work from his local employment of three weeks as a carpenter at \$1.00 an hour, indicated in the questionnaire for farmers he completed at the time of applying for benefit, that he operated a nearby farm which he had owned for the last 12 years. It consisted of 84 acres on which he cultivated 60 acres (39 hay, 10 in grain and one potatoes, etc.) and maintained 12 head of cattle.

He was then disqualified as having failed to prove he was unemployed in that the nature of his self-employment would ordinarily prevent him working full-time elsewhere. He was not relieved of the burden of such proof even during the off-season, by reason of having worked in insurable employment only 12 weeks of the 30 required by Regulation 156. The board of referees unanimously affirmed the disqualification.

Upon appeal, the Umpire referred the case back to the board to reconsider and rehear generally under Section 76 of the Act. Neither the board nor the insurance officer appeared to have taken into account the claimant's statement in the farmers' questionnaire to the effect he had performed the farm work from April to September mostly in the evening. Furthermore, the list, submitted by the claimant in his appeal to the board, of several employers for whom he had worked 21 days during the previous summer, was now supported by signed statements from these employers. Finally, the union in its appeal mentioned for the first time that the claimant had (in addition to his wife & children) hired help for the heavy work of the farm.

Appeal of the claimant's union to be reheard.

August 12th, 1958 (Reversed)

CUB 1551
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, familiar with local situation, unanimous—finding of fact, reversed, Evidence, burden of proof on administration, contributions record, employment history).

UNEMPLOYED (Available for full-time work, Engaged on own account, Family enterprise, Farmers, Off-season unemployment, Proof).

*Sections 54(1) and 57(1) of the Act
and*

Sections 156 and 158(3) of the Regulations

A 36 year old married claimant, upon lay-off for shortage of work from employment as a labourer at \$10.00 a day from June 10th to

November 14th, declared that for the last five years he had been the owner of a nearby farm of 120 acres on which he lived, 50 acres of which was under cultivation.

He was disqualified on the grounds that the small number of his weekly contributions (20 in the year prior to his claim, none in the last off-season and only three in the second previous off-season), indicated he was engaged in business on his own account; as the nature of his employment was such it would ordinarily have prevented him accepting full-time work elsewhere, he could not be considered unemployed. This disqualification was unanimously affirmed by the board of referees, despite the claimant's further statement that he had worked in lumber camps for approximately 10 weeks during the last off-season and could not depend on the operation of his farm for his obligations which included his two parents in addition to his own family.

Upon appeal, it was held that the claimant's engagement in business on his own account in the operation of a farm was incompatible with his employment from June 10th to November 14th. The board of referees had exaggerated the importance to be attached to the limited number of the claimant's contributions in the year preceding his claim (CUB 894), without taking into account the very important fact that these contributions had been earned during the farming season itself (CUB 745).

JURISPRUDENCE: CUBs 894 and 745 applied.

Appeal of the claimant allowed.

August 13th, 1958 (Varied)

CUB 1552

ADJUDICATION PROCEEDINGS (Disqualification—*indefinite, revision, Evidence—burden on claimant, presumption, statements after disqualification, weight of evidence*).

AVAILABILITY (Circumstances deliberately created, Disqualification duration shortened, Presumption, Proof, Prospects of employment, Restricted generally and as to area and occupation, Suitable employment (not) refused, Voluntarily left—*joint disqualification*).

VOLUNTARY LEAVING (Availability—*joint disqualification, Change of residence as cause, Just cause not shown, Personal circumstances, Proof—onus on claimant, Prospects of other employment, Retired from former employment*).

Sections 54(2)a) and 60(1) of the Act

The claimant at the age of 63 years, left a steady job (janitor at an R.C.A.F. establishment at Portage la Prairie), which he had held for 3½ years, because he had traded his home there for a store building, in which his wife intended to open a coffee shop in the spring, in an outlying community in the greater Winnipeg area. He moved there where there was practically no work to be had and became engaged in remodelling the place which had been vacant for 4 years and was in great need of repairs; his activities were such as to require all of his attention until the succeeding April at which time, according to his statement, he would be available for work as a janitor in the greater Winnipeg area.

The claimant was disqualified under Section 60(1) and as not available under Section 54(2)a) indefinitely. The board of referees maintained both disqualifications, the latter however by majority decision only.

Upon appeal, the disqualification under Section 60(1) was maintained on the grounds a claimant who voluntarily leaves his employment to move to another area where he has no definite prospect of other work, does not show just cause, according to the standing rule of jurisprudence (CUBs 885, 1001, 1030 and 1100) particularly when the reasons are purely personal (CUB 1084).

The claimant was also held to have failed to discharge the onus of proving he was available for work despite contradictory statements subsequently made by himself and his wife. These do not carry much weight, not only because they were made after his disqualification (CUBs 564, 1220 and 1268), but also in view of the restrictive circumstances in which he had deliberately placed himself. This disqualification was removed from the beginning of April, however, in the absence of evidence that the claimant was still engaged on that date in remodelling the store and inasmuch as no offer of employment was made to test his availability (CUB 1539). The reasons given for not having made any offer, namely, the claimant's age and city competition in the claimant's registered occupation of janitor, should not be held against the claimant.

JURISPRUDENCE: CUBs 885, 1001, 1030, 1086 and 1100 followed, CUBs 564, 1220 and 1268 referred to and 1539 applied.

Appeal of the claimant dismissed except as regards termination of indefinite disqualification for availability.

August 13th, 1958 (Varied)

CUB 1553

ADJUDICATION PROCEEDINGS (Board of Referees (not) ultra vires, unanimous finding of fact, Disqualification procedure, revision, Evidence—burden of proof on administration and claimant, documentary, enforcement officer finding, presumption, Question of fact).

CLAIMS MATTERS (Dependency, Punitive Disqualification).

Sections 47(3) and 65 of the Act

A claimant who had claimed and been paid the dependency rate for his eleven-month old son, had his claim reduced to the single rate and was also disqualified under Section 65 for false statements following a local office investigation six months later: the claimant's wife stated that since the claim was filed she had only received \$28.00 to date from the claimant and that the local police had a warrant for his arrest on non-support. Upon filing a new claim a year later as a divorced person and being allowed dependency rate for his son now 3½ years of age, the claimant appealed against the earlier decision on the grounds he had never received notice of it. Furthermore, he stated he had not been jailed despite a court order providing that alternative upon failure to pay \$135.00 monthly in support of his dependent.

By unanimous decision, the board of referees upheld the insurance officer's original decision and in addition reduced the later claim to the single rate.

Upon appeal, the reduction of the claim to the single rate was upheld on the grounds the claimant's entitlement to dependency rate during these periods was entirely a question of fact on which the claimant had failed to adduce satisfactory evidence. His bare statements were not sufficient evidence in a matter where some of these could have been easily substantiated by documentary proof, such as cancelled cheques, money order stubs or other receipts. The disqualification under Section 65 was removed however on the grounds the claimant's failure to produce satisfactory proof of his entitlement to the dependency rate did not of itself establish the statements in which he claimed such rate, to be false.

Appeal of claimant dismissed except for S.65.

August 13th, 1958 (Reversed)

CUB 1554

ADJUDICATION PROCEEDINGS (Board of Referees, majority decision, Commission's responsibility re claims procedures, Evidence, burden on claimant, credibility, statement after disqualification, weight of evidence, Jurisdiction of adjudicating authority re aspect raised by adjudication).

AVAILABILITY (Absence from Local Office area, Antedate, Disqualification retroactive).

CLAIMS MATTERS (Antedate—good cause shown, Local Office Practices, Prescribed manner of making a claim and reporting).

*Sections 46(3) and 54(2)a) of the Act
and
Section 150 of the Regulations*

A claimant, on filing his initial application on January 3rd after temporary layoff from December 20th, applied for antedate to cover the period from December 22nd to 28th. He gave as the reason for his delay that he had left Oshawa Friday, December 20th, for his home in Tweed, 250 miles away, as he did every week-end, and he could not stay in Oshawa until next morning in view of the ride home available Friday night.

The application was refused and the board of referees maintained this refusal by majority decision.

Upon appeal, the claimant was held to be entitled to antedate as had it not been for the arrangements as to reporting made by the L.O. chiefly to suit its own convenience, he would and could have filed his claim on a much earlier date, December 19th, when he went into the local office and according to his uncontroverted statement was "refused any help whatsoever". It was no answer for the local office to say the claimant could have filed his claim at the Belleville local office which was closer to Tweed, where he was staying in the week in question. The claimant however was disqualified from December 28th to January 2nd as not genuinely available, his sole reason for not reporting being that it was during the Christmas and New Year holiday period.

Appeal of claimant's union allowed but not available in part.

August 13th, 1958 (Affirmed)

CUB 1555

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, credibility, Evidence—burden on claimant, credibility, documentary, statements before and after disqualification, Question of fact).

AVAILABILITY (While not fully Capable, Intention of claimant, Pregnancy, Presumption, Proof, Restricted generally).

CAPABLE OF WORK (Availability affected, Pregnancy, Proof, Suitability for employment likely to be offered).

Section 54(2)a) of the Act

A 22 year old married claimant, two months after claiming benefit upon being temporarily laid off from her one and one half year's employment as a chocolate packer, stated to the local office that she expected a baby about four months later, that she was not feeling very well and was not interested in taking any kind of job.

Upon being disqualified as not available because of her physical condition, she stated three weeks later in her appeal to the board of referees, that her physical condition in no way hindered her ability to work. At the same time she produced a medical certificate to the effect she was only capable of light work, which was in flagrant contradiction. The board of referees unanimously affirmed the disqualification by reason of the claimant's general unacceptability to employers by reason of her condition. However, the chairman of the board granted leave to appeal further, on the grounds that many women, following the discomfort of the earlier periods of pregnancy, are capable of pursuing their usual occupation.

Upon appeal, it was held that the real issue was not, as in CUBs 1483 and 1484, an objective assessment of well established facts but a question of the claimant's credibility. The claimant was held accordingly to have failed to discharge the burden of proof of her availability.

JURISPRUDENCE: CUBs 1483 and 1484 distinguished.

Appeal of the claimant dismissed.

August 13th, 1958 (Affirmed)

CUB 1556

ADJUDICATION PROCEEDINGS (Commission's responsibility re claims procedure and policy, Interpretation, Jurisdiction of adjudicating authority re legislation).

CLAIMS MATTERS (Dependency—relationship of step-father).

*Sections 47(3)a)iv) and 67(3)b) of the Act
and*

Section 168(1)c) of the Regulations

A 36 year old single claimant claimed dependency rate in respect of his 72 year old step-father who lived in another province in a "self-contained domestic establishment", maintained by the claimant.

The claim was allowed at the single rate only. The board of referees unanimously confirmed it.

Upon appeal, it was held that such dependant failed to fall within the meaning of paragraph (c) of Regulation 168(1), which required that the claimant be a married person, a widow or widower and even then only covered his step-children. This restrictive interpretation was held to be unavoidable in view of the restrictive definition of the expression "connected by marriage" adopted by the Commission pursuant to its exclusive power to do so under Section 67(3)b) of the Act.

Appeal of claimant dismissed.

August 13th, 1958 (Affirmed)

CUB 1557
(*French*)

ADJUDICATION PROCEEDINGS (Board of Referees, claimant (not) present, rehearing, unanimous—credibility, Evidence—medical certificate, statements after disqualification, weight of evidence).

CAPABLE OF WORK (Permanent incapacity, Proof, Retired from former employment, Separation from employment in this connection, Sickness Benefit, Suitability for employment likely to be offered).

Section 54(2)a) of the Act

An 80 year old widower whose employment for the last 17 years as an office clerk in his son's industrial equipment sales' business, terminated upon his suffering a stroke of paralysis and undergoing a prostate operation two months later, applied for the benefit five weeks later. He stated he had recovered and was able to work at the usual working hours and submitted a medical certificate to the effect he was able to do "his usual work". It was noted he was not fully recovered as he required his son's assistance to sit down and to leave the local office and could not even sign his name.

A disqualification under Section 54(2)a) as not capable was imposed. It was unanimously affirmed by the board of referees because the declaration of the claimant's son, who represented the absent claimant throughout, as to the latter's complete recovery was not medically substantiated. The claimant then submitted a new medical certificate to the effect his health was greatly improved and he was now capable of "light" work. This moved the insurance officer to refer back for rehearing at which the disqualification was reaffirmed.

Upon appeal, it was held that the claimant's capacity was to be weighed according, not to his age, but to his physical and mental capacity to work under conditions fairly similar to those under which employed persons ordinarily work (CUB 1491), and, in view of the evidence, which was corroborated by the son at the rehearing, it was not possible to maintain the claimant was physically capable of work under the Act.

JURISPRUDENCE: CUB 1491 followed.

Appeal of claimant dismissed.

August 18th, 1958 (Affirmed)

CUB 1558
(French)

ADJUDICATION PROCEEDINGS (Commission's responsibility re adjudication and disqualification procedures, Evidence—burden of proof on claimant, employer information, Interpretation).

CAPABLE OF WORK (Married Women's Regulations, Pregnancy, Separation in this connection, Sickness benefit).

CLAIMS MATTERS (Disqualification period—duration, Married Women's Regulations).

Section 70 of the Act

and

Section 161 of the Regulations

A 26 year old married claimant filed a claim on July 30th, 1956 in which she stated she had been granted on March 21st 1956, to have a child born on June 11th, four months' leave from her eight years' employment as a day-worker but had been obliged upon her return to resign. The employer stated the claimant was dismissed for her prolonged absence.

Accordingly, the claimant had been disqualified as failing to meet any of the requirements (10 contribution weeks) or any of the exceptions provided by Regulation 161 for a married person whose first separation from employment held at the time of her marriage, occurred within two years (July 16th, 1955). The claimant renewed her claim on June 11th, 1957, in which she declared having worked for the same employer from February 18th to June 10th, 1957. Almost ten months later, on April 2nd, 1958, she appealed against her disqualification having lasted until July 13th, 1957, on the grounds her separation date in 1956 was other than shown and the reason for her separation fell within the exception of Regulation 161(3)a). The Commission, pursuant to Section 70, authorized her appeal to be heard despite its lateness. The board of referees affirmed the disqualification.

Upon appeal, it was held that if the claimant's separation had occurred March 21st, 1956, it was ascribable to her voluntary leaving on account of pregnancy, a reason in no way connected with her employment (CUB 1183) nor a state assimilable to illness (CUB 1093 and 1094). Furthermore, if her contract of service had ended instead on May 14th, 1956, (official date stated by employer, to permit claimant to withdraw her group insurance benefits under the guise of being still employed) there is no proof that it was by reason of the occurrence of any of the five events enumerated in Regulation 161(3)a), the only cause being her pregnancy, whether she or her employer actually initiated the separation.

JURISPRUDENCE: CUBs 1093, 1094 and 1183 followed.

Appeal of claimant dismissed.

August 25, 1958 (Rehearing) (Varied)
 December 4th, 1958 (Affirmed)

CUB 1559
 CUB 1559A
 (French)

ADJUDICATION PROCEEDINGS (Board of Referees—claimant present, examination of witnesses, familiarity with local situations, investigation, unanimous—finding of fact, Evidence—statements before and after disqualification and after Board of Referees, Jurisdiction of adjudicating authority re aspect not brought to appeal, Question of fact, Rehearing on Umpire's referral—new facts submitted and new facts needed and for other reasons).

AVAILABILITY (Domestic Circumstances, Proof, Prospects of employment, Restricted generally and as to area and travel, Suitable employment refused—joint disqualification).

SUITABLE EMPLOYMENT (Availability—joint disqualification, Change from usual area and occupation, Conditions—transportation facilities, Domestic circumstances, Duration of unemployment long, Prospects of other work and return to former).

Sections 54(2)a), 59 and 76 of the Act

A 48 year old married claimant whose employment as an ammunition operator at \$1.16 an hour in a nearby town, had terminated after three years for shortage of work, refused an offer 4½ months later of continuing employment as an operator in a sewing shop at the prevailing rate of \$18.00 to \$20.00 a week, on the grounds that she had a family and the means of transportation to this larger town 20 miles away, were not suitable. She stated further, that she could not work at other than her former establishment because this was the only place from which she could commute day and night.

The claimant was disqualified under Section 59 and also, from the date of refusal, under Section 54(2)a) as not available, inasmuch as she had been unemployed 4½ months, the employment opportunities in her own locality were practically non-existent, and her chances of being rehired by her former employer very slight. The board of referees unanimously upheld the disqualifications.

Upon appeal, the case was referred back by the Umpire under Section 76 for rehearing generally in view of assertions made by the claimant in her appeal, which led to believe that more than likely the board had misunderstood her testimony and which furthermore contained new facts in some respects and in others required additional explanation. The board unanimously rescinded the disqualification under Section 59 but re-affirmed that imposed under Section 54(2)a).

Upon appeal, it was held that the question of the suitability of the employment offered was not before the Umpire as not having been appealed. As regards availability, it was held that as this is above all a question of fact, there was no reason to change the unanimous decision of the board which is deemed to be well acquainted with the conditions of the local labour market and which was aware of all the statements of the claimant (who also appeared as a witness at the hearing), including her later explanations to the effect she would have been willing to accept work elsewhere than at her former employer provided the salary was comparable, she could be home every evening and transportation was not an obstacle.

Appeal of claimant dismissed.

August 25th, 1958 (Reversed)

CUB 1560
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, majority decision—credibility, Disqualification punitive, Evidence—burden on administration, contributions record, statements after disqualification, weight of evidence).

AVAILABILITY (Efforts to find work, Family enterprise, Presumption of N.A., Proof, Voluntarily left—ignored by insurance officer).

CLAIMS MATTERS (Punitive disqualification).

UNEMPLOYED (Available, Family enterprise, Farmers, Voluntarily left previous to new work).

Sections 54(2)a) & 65 of the Act

A 21 year old single claimant had voluntarily left his employment from November 27th to December 22nd as a truck helper at \$8.00 a day on the grounds his wages were too low. He was later found, according to an enforcement officer of the Commission, to have since helped, as the oldest son, his father, who owned a large farm, in the operation thereof and in the construction of a barn, at which his services were absolutely essential.

The claimant was accordingly disqualified on October 24th as not available for work from May 1st and for false statements in having declared himself unemployed and available. These disqualifications were upheld by majority decision of the board of referees.

Upon appeal, it was held that the claimant had proven he was available in that nothing in the record contradicted his statements that he had often visited and telephoned the local office in that respect; the claimant had contended further he had been always seeking work, had never worked in the operation of the farm itself, was not paid any salary and had simply made use of his enforced leisure to help. Furthermore his contributions record disclosed he had worked to a considerable extent elsewhere than for his father in the three or four years preceding his claim.

The disqualification under Section 65, imposed in part with respect to his availability, was also rescinded.

Appeal of the claimant allowed.

August 26th, 1958 (Reversed)

CUB 1561

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Interpretation).

EARNINGS (Allocation, Holiday pay, Overtime credits, Usual remuneration).

UNEMPLOYED (Contract of service, Leave compensatory and seasonal, Off-season unemployment, Usual remuneration).

*Sections 54(1) and 57(1) of the Act
and*

Sections 158(2), 172(1) and 173(1) of the Regulations

A claimant who had been employed by the federal Department of Transport as a labourer in its canal system until January 11th when the

specific canal closed down with the end of the navigation season, then went on 14 days' annual leave and 47 days' compensatory leave for overtime worked during the 1957-58 season.

The claimant was disqualified as not unemployed. The board of referees allowed his appeal unanimously.

Upon further appeal, the claimant was held to be not unemployed, during the weeks of compensatory leave for which he was paid the full amount of his usual remuneration (Regulation 158(2)). The claimants were not seasonal employees, as found by the board, so long as the existing Regulations under which they were hired provided that their overtime credits were to be liquidated by cash only if such compensatory leave was not possible before the new season opened in April. The facts showed the employer-employee relationship to have continued to exist during such weeks, as in CUB 1443, where the claimant also was not working, was nevertheless retained on the payroll, continued to accumulate annual, sick and special leave credits, and had deductions made from his salary for superannuation purposes.

It was held further that for any week in respect of which the claimant was paid less than the full amount of his usual remuneration, such lesser amount should be treated as earnings, as in CUBs 1443 and 1445. Actual services, i.e., overtime, had been performed by the claimant in the past and the remuneration could truly be said to be in connection with or for services actually performed. Also the remuneration should, the unanimous board of referees notwithstanding on the grounds such moneys had been earned during his overtime and not while on leave, be allocated to such week.

JURISPRUDENCE: CUBs 1443 and 1445 followed. Applied in CUBs 1652, 1653, 1654, 1655, and followed in 1675.

Appeal of the insurance officer allowed.

August 26th, 1958 (Affirmed)

CUB 1562

ADJUDICATION PROCEEDINGS (Disqualification—extenuating circumstances, Evidence—burden on claimant, irrelevant to decision).

AVAILABILITY (Absence from local office area, Antedate, Personal circumstances, Proof, Prospects of employment, Temporary non-availability).

CLAIMS MATTERS (Antedate, Local Office practices, Prescribed manner of making claim and reporting).

Section 46(3) of the Act and

Section 150(1) of the Regulations

A 35 year old claimant had filed an initial application shortly after being laid off from his employment as a steelworker in Vancouver from August to November 22nd, 1957. Then on January 22nd, 1958, he wrote to the local office from Griswold, Manitoba to say that he had worked from December 30th, 1957 until January 17th, 1958, had left town next day on short notice as his father was seriously ill and would report to the local office as soon as possible. He then reported to the local office on January 28th, at which time he requested his renewal claim, allowed

as of January 26th, the commencement of that week, to be antedated to the commencement of the week previous.

The application was refused and the refusal was confirmed by the board of referees (as per CUB 1379) unanimously.

Upon appeal, the refusal of antedate was upheld, inasmuch as the claimant was tardy in advising the local office only a day prior to his return and also had failed to prove he was available for work. It was considered irrelevant that it was quite probable he had missed no opportunity of suitable employment (CUB 1244): he had notified his union just before leaving that Saturday morning—when the local office was closed—of his separation from work the previous day, of a telephone number where he could be reached and of his returning on a day's notice; furthermore, his union's office did all the placements, except for Kitimat, of persons in the claimant's particular classification which was highly specialized.

It was held also that there was no grounds in the Act or Regulations for taking cognizance of what is ordinarily known as leave of absence on compassionate grounds. An absence from the local area solely because of a death of a near relative and his funeral (January 21st) can only be taken at the risk of prejudicing a claimant's status and all the more so when a week's absence is involved and the local office is only made aware of it very tardily.

JURISPRUDENCE: CUB 1244 applied.

Appeal of claimant dismissed.

August 26th, 1958 (Affirmed)

CUB 1563

ADJUDICATION PROCEEDINGS (Commission's responsibility re claims procedures, Evidence—burden on claimant, irrelevant to decision, presumption, Jurisdiction of adjudication authority re procedure).

AVAILABILITY (Circumstances deliberately created by claimant, Proof, Students—not directed, course's compatibility with usual working hours and off-season of usual occupation, intention re work).

Sections 54(2)a) & 57(3) of the Act

A 29 year old single claimant registered as a general office clerk at the Chilliwack local office immediately following termination of her employment from August 14th to October 5th, 1957, as a cannery worker at a packing house in Sardis, B.C., her home town. She then indicated in her weekly report for the week commencing November 24th, 1957, that she had been attending, since November 20th, the Chilliwack High School; the school hours were from 9 A.M. to 3:20 P.M. with no classes scheduled one afternoon out of seven and before 11 A.M. one morning out of seven.

The claimant was disqualified as not available from November 20th. The board of referees maintained the disqualification.

Upon appeal, it was held the claimant had failed to discharge the onus of proving her availability. In the absence of direction by the Commission under Section 57(3) to attend such course, availability must be determined in the light of principles applying to claimants generally, that is to say, as "an objective matter...in the light of a claimant's prospects for employment in relation to a certain set of circumstances beyond his

control or which he has deliberately created" (CUB 1374). The presumption of non-availability adverted to in CUB 1249 was not rebutted in view of the claimant's statements; these clearly indicated she would not have been willing to accept suitable employment if such acceptance meant she would have had to choose between school and any work offered. Furthermore, no attempt was made by the claimant to establish the extent to which any adjustment of the officially prescribed hours or curriculum could have been effected to facilitate her engaging at the same time in full-time remunerative employment. The prospect of suitable work that would have been compatible with her school hours, was most remote despite her employment history showing she had worked at many places and at several occupations such as nurse's aide, kitchen helper, maid and factory worker, on many different shifts. The placement officer had reported there was only one packing house that had a night shift at present and employment as a nurse's aide at the local hospital did not come through local office.

It was held that the claimant's decision to nevertheless enroll as a regular daytime high school student amounted to the deliberate creation by her of circumstances which so restricted her likely prospects of employment as to constitute on her own initiative a temporary withdrawal from the labour market. It was no argument for her to suggest that the Commission should direct claimants to high school courses in the same manner as to trade schools as this is an administrative matter which rests solely with the Commission.

JURISPRUDENCE: CUBs 1249 and 1374 q. applied. Distinguished in CUB 1573 and applied in CUB 1617.

Appeal of the claimant dismissed.

August 28th, 1958 (Reversed)

CUB 1564
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous, reversed, Interpretation).

EARNINGS (Allocation, Holiday pay, Overtime credits, Usual remuneration).

UNEMPLOYED (Contract of service, Leave compensatory and seasonal, Off-season Unemployment, Usual remuneration).

Sections 54(1) and 57(1) of the Act
and

Sections 158(2), 172(1) and 173(1) of the Regulations

A claimant had been employed by the federal Department of Transport as a fireman from September 17th to December 31st, 1957 when the navigation season (at Sorel) terminated. He then went on compensatory leave until February 12th, 1958 to liquidate overtime accumulated during the season.

The claimant was disqualified as not unemployed. The board of referees unanimously rescinded it.

Upon appeal, the claimant was held to be not unemployed during the weeks of compensatory leave with respect to which he was paid the full amount of his usual remuneration (Regulation 158(2)). The claimant, in

view of the present regulations governing his employment, was not under a contract of service as a seasonal employee. The facts showed the employer-employee relationship to have continued to exist during such weeks, as in CUB 1443, where the claimant also was not working, was nevertheless retained on the payroll, continued to accumulate annual, sick and special leave credits, and had deductions made from his salary for superannuation purposes.

It was held further that for any week in respect of which he was paid less than the full amount of his usual remuneration, such less amount should be treated as earnings, as in CUBs 1443 and 1445. Actual services, i.e., overtime, had been performed by the claimant in the past and the remuneration could truly be said to be in connection with or for services actually performed. The remuneration also should be allocated to such week, the unanimous board of referees notwithstanding on the grounds such moneys had been earned during his overtime and not while on leave.

JURISPRUDENCE: CUBs 1443 and 1445 followed as in CUB 1561. Applied in CUBs 1652, 1653, 1654, 1655, followed in CUB 1675.

Appeal of insurance officer allowed.

August 26th, 1958 (Varied)

CUB 1565

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous, finding of fact, Evidence—burden on claimant, irrelevant to decision, statements before disqualification, Interpretation, Jurisdiction of adjudicating authority re aspect raised by adjudication, Question of fact).

CAPABLE OF WORK (Sickness benefit).

CLAIMS MATTERS (Punitive disqualification).

UNEMPLOYED (Availability for full-time work despite employment, Disqualification duration, Engaged on own account, Farmers, Off-season unemployment, Proof).

*Sections 54(1), 57(1), 65 and 66 of the Act
and
Sections 156(b) and 158(3) & (4) of the Regulations*

A 39 year old married claimant, following layoff, by reason of Spring breakup, from his employment of tractor driver by the Saskatchewan Timber Board from November 15th, 1956 to April 15th, 1957, applied for benefit and reported himself to be unemployed thereafter. He was found six months later by an enforcement officer of the Commission to be operating a large farm: 303 acres, of which 200 were cultivated in grain and on which he maintained 20 head of cattle including milking stock and 20 pigs. He stated he had decided on his own initiative, upon being laid off and being told he would not be required by his regular employer until next fall, to operate it himself rather than rent out as in previous years. He admitted having worked on it almost continuously during the summer season to the extent he would have had to hire someone to replace him in the event of employment elsewhere because he had sufficient work on the farm to keep him fully occupied.

He was disqualified retroactively as not unemployed and also under Section 65 for false statements with respect to unemployment and earnings. The board of referees unanimously upheld both disqualifications.

Upon appeal, the claimant was held, on the basis of his own initiative and his admissions in relation thereto, to have become, despite his previous employment history as an industrial worker, a person operating a farm and engaged in business on his own account (Regulation 158(3)). Furthermore, to have become so to such an extent he could not have accepted other full-time employment during the farming season (Regulation 158(4)). His subsequent statement to the effect he now remembered having broken his right wrist in a farm accident in the early part of summer which incapacitated him for approximately 10 to 12 weeks was of no effect. He was not able to establish his entitlement to benefit prior to the date of injury; for this reason, in the event the injury had necessitated his ceasing work, he must be held to have fallen under the disqualification provided by section 66 of the Act (for the duration of the injury).

The further disqualification imposed under Section 65 for having falsely declared he was unemployed and had no earnings during such season, the question of false statements being entirely one of fact as stated in CUB 1439, was maintained in the absence of anything in the evidence or in the claimant's appeal to disturb the board of referees' finding.

The only modification in the disqualification imposed under Section 54(1) was with respect to the off-season commencing on September 29th with respect to which the claimant could be held to have proved that the extent of his self-employment thenceforth was such it would not have prevented him from accepting full-time employment, provided the claimant had the 30 contribution weeks mentioned in Regulation 156(b).

Appeal of the claimant's union dismissed but disqualification terminated subject to requirements of Regulations 156(b).

September 2nd, 1958 (Affirmed)

CUB 1566

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present, credibility—unanimous—finding of fact, Evidence—burden on claimant, credibility, employment history, enforcement officer, statements before and after disqualification, Interpretation, Question of fact).

UNEMPLOYED (Availability for full-time work, Earnings, Engaged on own account, Family enterprise, Proof, Retroactive disqualification, (not) Subsidiary).

*Sections 54(1) and 57(1) of the Act
and
Sections 158(3) and (4) of the Regulations*

A 31 year old claimant whose employment as a turret lathe operator for a manufacturer of heavy machinery had terminated after nine months, was found eight months later by an enforcement officer of the Commission to be tending a local clothing store. He stated, although refusing to sign any written statement, that he was the sole owner since approximately two months after separation and coming on claim, of a clothing store that he had formerly operated in partnership with his father.

The claimant was disqualified as not unemployed, retroactive to the date he became sole owner. It came out at the hearing of the board of referees which the claimant attended with his lawyer, that the father who operated a shoe repair shop in the rear of the same premises, owned the

land and the building, and the claimant owned the business, the value of which he estimated at \$5,000 and any profits from which he had plowed back into the business. The board unanimously upheld the disqualification.

Upon appeal, it was held that the claimant was engaged in business on his own account in that although ownership of a business enterprise is not enough of itself, according to the jurisprudence, for a person to be not unemployed, active participation in its operation is another matter. It was sufficient to show that the claimant had been personally handling or operating a business in his own interest and on his own responsibility and initiative, (CUB 1543), either alone or with others. The degree of participation in any of the details of the business, sufficient for the purpose of Regulation 158(3), was solely a question of fact varying with the circumstances in each case. The profits or lack of profits were not a determining factor with respect to unemployment status (CUB 1032), nor the volume of the business but rather the claimant's intention (CUB 1052).

As the onus of proving entitlement to relief from a provision lies on the person claiming such relief (CUBs 1392 and 1537), the claimant was also held to have failed to prove his engagement in business was such it would not have prevented him from accepting full-time employment in a particular week during the period following his becoming sole owner of the store. This finding was based firstly on the lack of substantiation for his contention, which had not favourably impressed the board of referees, that in the event of other work he could have been replaced by his wife and in the alternative, by his father; and secondly upon his own admission of having taken over, as sole owner and operator, a clothing store he had formerly operated in partnership and having done so not later than two months after terminating his regular employment (as opposed to the claimant in CUB 1439 who had operated a business with his wife for three years while regularly employed and continued to do so while on claim). Finally, there was also taken into account, as in CUB 1543, the claimant's prolonged failure to acquaint the local office with his engagement in business for himself.

JURISPRUDENCE: CUBs 1032, 1052, 1392, 1537 and 1543 followed and CUB 1439 distinguished. Applied in CUB 1571.

Appeal of the claimant dismissed.

September 2nd, 1958 (Affirmed)

CUB 1567
(French)

ADJUDICATION PROCEEDINGS (Disqualification punitive, Evidence—burden on claimant, (no) documentary, enforcement officer finding, statement after disqualification, weight of evidence, Insurance officer generally).

CLAIMS MATTERS (Punitive disqualification).

EARNINGS (Business on own account, Net earnings, Proof, Reporting).

*Sections 56 and 65 of the Act
and
Section 172(1) of the Regulations*

A 23 year old claimant had declared, at the time of filing claim for benefit two weeks after her marriage, that she had been employed for four

years "as a clerk by a local entertainment club" until five weeks previous when her employment had ended for "lack of work". She was found, upon routine investigation, to have earned five months later \$100. as a singing artiste for a week in another local club. She had not reported to the local office on the grounds it was the same type of work she had done in her previous employment.

The insurance officer considered the remuneration as earnings to be taken into account and also imposed a disqualification under Section 65. The board of referees confirmed these decisions by majority vote.

Upon appeal, it was held the remuneration was in respect of services rendered and were therefore to be considered as earnings. As regards expenses incurred for such earnings, the claimant gave no valid information, her vague and unspecific statement (after disqualification) only referring to a few items, some of which are clearly non-deductible, and in no way establishing in what proportion other items were immediately and exclusively ascribable to the actual engagement. As regards the disqualification under Section 65, nothing in the evidence suggested the insurance officer, who is deemed to be quite cognizant of the situation, had abused the latitude given him by the Act in this respect.

Appeal of claimant dismissed.

September 3rd, 1958 (Affirmed)

CUB 1568

(French)

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present, examination of witnesses, unanimous—finding of fact, Evidence—burden on claimant, credibility, Question of fact).

UNEMPLOYED (Availability for full-time work despite, Engaged on own account, Family enterprise, Farmers, Off-season unemployment, Proof, Retroactive disqualification).

Sections 54(1) and 57(1) of the Act

and

Sections 156(b) and 158(3) & (4) of the Regulations

When a married claimant filed claim following the termination, on March 15th, of his employer's forestry operations and of his employment therein since November 13th previous as a lumberjack at \$20.00 a day, he stated that he owned and lived on a 200-acre farm, situated 30 miles away from Three Rivers and consisting of 100 acres under crop, 50 acres pasture and 50 acres woodland, that his work thereon would not prevent him from accepting suitable employment during the winter months and that his family helped him with the farm work.

He was disqualified from the date of his separation in that he had not proven he was unemployed since the nature of his self-employment in the operation of his farm was such that it prevented him from accepting full-time employment. Furthermore, he could not be relieved from the burden of such proof during the current off-season, since he did not have the 30

weekly contributions required by Regulation 156(b), having had only three contribution weeks and 18 in the two previous off-seasons. It came out further at the hearing of the board of referees at which he was present and gave testimony, that he had spent in the previous year more than \$1,000. for fertilizer and was so busy with farm work he could not accept employment which would not allow him to return home in the evening.

It was held that, inasmuch as the claimant's state of unemployment was only a question of fact, there was no reason to modify the unanimous decision of the board of referees which had had the advantage of examining and studying the evidence already on file in the light of the claimant's own testimony. The claimant had not proved his statement that the operation of the farm was not his chief occupation and had even failed to disclose the number, age and sex of his children who, in his opinion, would be able to perform all the work required on a farm such as his if the occasion arose. On the other hand, the facts on file showed that he had worked elsewhere only part of the agricultural off-season and that he devoted at least two-thirds of his time during the year to such farm.

Appeal of claimant dismissed.

September 4th, 1958 (Varied)

CUB 1569

ADJUDICATION PROCEEDINGS (Disqualification—extenuating circumstances, Evidence—employer finding, information and responsibility).

MISCONDUCT (Disqualification duration, Insubordination, Offences industrial, Proof, Relations with supervisors, Rules not followed, Union activities).

Section 60(1) of the Act

A 31 year old single claimant lost his employment after six years as a labourer for an automobile manufacturing company upon being discharged as an undesirable employee.

The claimant was disqualified under Section 60(1). The board of referees confirmed it, by majority decision.

Upon appeal, it was held that misconduct was clearly proven. The evidence clearly showed, firstly, that the claimant, who was a plant (union) committeeman of a department other than that in which he himself was employed, was unable, on being challenged by the foreman of that department with being in a work area other than his own (talking with another employee), to justify his presence there (the excuse it was normal procedure being disregarded) by producing the authorization required by the plant rules provided by the bargaining agreement. Secondly, instead of excusing or even explaining himself to the foreman and then withdrawing without delay to his proper work area, he responded with language ill-calculated to improve the situation (whether "vulgar, obscene or abusive" as contended or simply "shop talk"). Finally, he committed, by reason of the same contrary attitude, the insubordinate act of refusing to comply with the foreman's reasonable request to accompany him to the appropriate higher authority.

The duration of the original disqualification was reduced however from six to four weeks by reason of several mitigating circumstances, namely, the claimant's previous good record of industrial employment, including six years with the same employer, and, equally important, the view taken by the employer himself of the claimant's conduct, who considered that the claimant's improper actions fell short of major misconduct and simply dismissed him as an undesirable employee (a view also reflected in the dissent of a member of the board of referees).

Appeal of the claimant dismissed but disqualification reduced from six to four weeks.

September 5th, 1958 (Affirmed)

CUB 1570

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous, Chairman of Board, Commission's responsibility re claims procedures, Jurisdiction of adjudicating authority re aspect raised by adjudication).

CAPABLE OF WORK (Permanent incapacity, Proof, Separation from employment in this connection, Suitability for employment likely to be offered).

CLAIMS MATTERS (Antedate—good cause for delay not shown, Local Office Practices).

Section 46(3) of the Act

and

Section 150(1) of the Regulations

A 46 year old married claimant, while a coal fireman in the merchant marine, had incurred from a back injury a permanent partial disability in 1945 for which he had received compensation (10% increased over the years to 12½%). He finally accepted in 1949 a lump sum in final settlement; he continued to make further representations however up to the present. While recently employed at Kitimat he suffered an injury for which he was paid only temporary compensation, from June 13th to July 31st 1957, despite later representations for its continuance. On July 15th 1957 he had resumed work, as an iron worker for a Vancouver firm, but had then quit on September 3rd, it is gathered, because of physical incapacity for the work he was doing.

On February 18th 1958, the claimant applied for benefit and completed an application to have such claim antedated to November 17th, 1957, a total of 78 working days. He stated as the reason for delay that he had applied in the interval for workmen's compensation and been refused. The insurance officer refused his application for antedate and the board of referees unanimously upheld his decision, its chairman however allowing leave to further appeal, in the light of CUB 626, for the purpose of considering his probable employability in view of his permanent disability.

It was held there was no valid reason under the circumstances to disagree with the board's decision as the only reason given by the claimant for the delay of five months in reporting to the local office was not reasonable. The local office would have given him correct information as to his benefit

rights and would have registered him for work of a type, he was, in the absence of any contrary declaration, capable of doing. Antedate, according to CUB 1454, is allowed only if the claimant can prove he was prevented from attending at the local office earlier, by circumstances beyond his control or that under the circumstances existing, it was reasonable that he should not so attend.

JURISPRUDENCE: CUB 1454 distinguished and CUB 626 noted by Board chairman as basis for leave to appeal.

Appeal of the claimant dismissed.

September 8th, 1958 (Reversed)

CUB 1571

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present, examination of witnesses, unanimous—reversed, Evidence—benefit of doubt, burden of proof on claimant, credibility, enforcement officer finding, statements before disqualification).

UNEMPLOYED (Available for full-time work, Engaged on own account, Off-season unemployment, Proof, Subsidiary).

*Sections 54(1) and 57(1) of the Act
and*

Section 158(3) and (4) of the Regulations

A 33 year old single claimant, after being laid off from seasonal employment as a draftsman and labourer with the provincial Department of Highways from August 1st to December 20th, 1957, registered on January 16th, 1958, for employment as an electrician. He subsequently reported weekly earnings which were within the range of those allowable. Investigation by an enforcement officer of the Commission disclosed that, by a fee-splitting arrangement with the owner of a golf driving range, the claimant had, as he stated, conducted since February 24th, 1958 a golf clinic at 2:30 P.M. and 7:30 P.M. on Mondays, Tuesdays and Fridays of each week; in addition he gave driving lessons by appointment. The whole averaged from one and one half to three hours each such day. His earnings therefrom were as he had previously reported to the local office. The claimant made it clear that he was still in the labour market as an electrical fitter and had taken up the venture as his only alternative even part-time, although it might develop into a full-time job. He stated he would abandon it for regular work.

The claimant was disqualified as unemployed in that he was engaged in business on his own account as a golf instructor. The disqualification was unanimously upheld by the board of referees on the basis of testimony from the claimant and the owner of the driving range, in the light of CUBs 265 and 705. Leave to appeal was granted however on the possibility of a "hair-line" distinction as to the claimant's availability for full employment while carrying on such activity in hours other than those of normal employment.

Upon appeal, the claimant was given the benefit of doubt and was held to have discharged the onus of proving that the "building up of the business" did not prevent him from accepting full-time employment in a

particular week. This was determined in the light of the particular circumstances of the case (CUB 1566), such as the extent of his participation, and also his intention; the claimant's straightforward conduct in immediately informing the local office of his earnings and part-time activities and in making clear his intention to continue in the labour market was considered impressive.

JURISPRUDENCE: CUB 1566 applied and CUBs 262 and 705 (inferentially) distinguished.

Appeal of the claimant allowed.

September 12th, 1958 (Varied)

CUB 1572

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—varied, Disqualification—extenuating circumstances, Question of fact).

VOLUNTARY LEAVING (Described, Duration of disqualification, Extenuating circumstances, Grievances raised with employer, Just cause not shown, Personal circumstances, Prospects investigated beforehand, Suitability of employment given as reason, Working conditions).

Section 60(1) of the Act

A 45 year old married woman who resigned after seven years' employment as a bookkeeper, voluntarily left her employment within the meaning of the Act as she left on her own initiative or of her own accord rather than at the employer's behest. This was a simple question of fact (on which the board of referees was unanimous), regardless whether the claimant would have ordinarily preferred to stay or not.

She did not have just cause for so leaving simply because she was paid less than the average (\$250. monthly, as opposed to the \$280. shown as the weighted average for female senior bookkeepers in the Board of Trade survey for that area) or because the future increase of \$14.00 a month, promised her when she sought—her efforts to find work elsewhere while still employed having proven fruitless—to have her grievances remedied just before resigning, was less (CUB 1187) than that (\$15.00 and \$20.00) of which other members of the office staff had already been advised.

There were present however a number of extenuating circumstances for reducing the original disqualification from six to three weeks. The claimant had a satisfactory record of lengthy unbroken employment in progressively responsible work, including some of the duties formerly attributed to the chief accountant. She had performed a significantly heavier work load, both as to volume and level of responsibility, than formerly, without what she considered adequate recognition by the employer prior to the date of her resignation and of the offer of the increase referred to above. Finally, there was the unhappy atmosphere these factors created which was not conducive to the good health of the claimant as substantiated in part by detailed medical certificate.

JURISPRUDENCE: CUB 1187 followed.

Appeal of claimant dismissed but duration reduced (6 to 3).

September 18th, 1958 (Reversed)

CUB 1573

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Evidence, burden on claimant, employment history, presumption, statements before and after disqualification and after Board of Referees).

AVAILABILITY (Efforts to find work, Employment prospects, Intention of claimant, Presumption of N.A., Proof, Student—compatibility off-season, general unemployment).

Section 54(2)a) of the Act

An 18 year old single claimant whose last employment (lasting six weeks) had terminated with the fishing season, stated seven weeks later, on applying for benefit on December 3rd, that since his last job ended he had been attending school. The claimant resided in a small coastal town out of which, according to his employment history, he had worked whenever he could as a fisherman, regardless how short the periods.

The claimant was disqualified as not available. The board of referees unanimously upheld the disqualification.

Upon appeal, the claimant was held to have rebutted, despite not proving, as noted by the board, individual and serious efforts to find work, the prima facie presumption of non-availability arising from full-time attendance at school, by reason of the exceptional circumstances present. These circumstances are the claimant's employment history, his reiterated declaration, against which nothing contrary has been adduced, that he was willing to abandon his attendance at school should any job prospects be offered him, and finally the heavy unemployment in the area following the end of the fishing season with the preference in available jobs being given married men.

The circumstances in CUB 1249, relied upon by the insurance officer in the present appeal, were held to be readily distinguishable. That claimant, shortly after voluntarily leaving, had commenced a regular school-term at which her full-time attendance was necessary; in addition she had also refused an offer of suitable employment. Also held to be obviously different were the circumstances in CUB 1563, which referred with approval to CUB 1249.

JURISPRUDENCE: CUBs 1249 and 1563 distinguished.

Appeal of claimant allowed.

September 18th, 1958 (Rehearing)

CUB 1574

ADJUDICATION PROCEEDINGS (Evidence—burden of proof, Rehearing on Umpire's referral—new facts needed).

VOLUNTARY LEAVING (Extenuating circumstances, Grievances not raised, Proof—onus on administration and on claimant, Prospects of employment not investigated, Suitability of employment as reason, Working conditions).

Sections 60(1) & 76 of the Act

A 24 year old married claimant voluntarily left his employment after 6 years as a soft-drink filling machine operator because his employer refused to pay him more than his regular wage of \$32.00 a week unless he would continue to perform, as he had for the last year and a half, an additional two-hours' work six days a week for an extra dollar a day.

A disqualification was imposed under Section 60(1) and upheld by majority decision of the board of referees. The dissenting member declared that the claimant was earning at the regular rate of only .65 cents an hour and at the even lower rate of .60 cents an hour, taking into account the extra work, compared to the average in the district for unskilled labourers of .90 cents to \$1.05 an hour.

Information received subsequent to the board of referees' decision appeared to indicate that the claimant's salary rate was considerably lower than that paid the two other operators in the same locality (\$42.50 for a 49 and one-half hour week and \$47.00 for a 45-hour week ordinarily and a 50-hour week during the three summer months) and in fact was even lower (by \$3.00) than that of the three helpers each which the other two employers provided (the claimant had no helper).

On appeal, it was noted in addition that no information had been obtained from the claimant to show whether prior to his resignation he had ever complained to his employer or sought with him any adjustment. Also, inasmuch as the claimant appeared to have left suddenly, it should be established whether before separation, the claimant had made any personal effort to ascertain the reasonable prospects of alternative employment.

In view of the foregoing, the Umpire referred the case back under Section 76 for rehearing generally.

Appeal of claimant to be reheard.

October 3rd, 1958 (Affirmed)

CUB 1575

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous, Evidence—burden of proof on claimant).

VOLUNTARY LEAVING (Change of residence's distance from work, Domestic circumstances, continuing, Duration of disqualification, Extenuating circumstances, (no) Haste, Just cause not shown, Proof—onus on claimant, Prospects of other employment not investigated beforehand, Transportation and travel as cause, Trial period, Union relationship, Working conditions).

Sections 60(1) and 61 of the Act

A 62 year old married claimant residing in Toronto voluntarily left his employment after two and one half years as a cylinder pressman within two months of his employer relocating his establishment from Toronto to Scarboro, 10 miles away. The grounds for separation were the difficulties entailed by the use of public transportation after the midnight shift and the greater loss of travelling time than formerly, which was detrimental to the household duties the claimant had by reason of his wife being an invalid.

A disqualification was imposed under Section 60(1) but of three weeks' duration only by reason of the long travelling distance involved. At the hearing and in its appeal to the Umpire, the claimant's Union contended the claimant was, according to the Union rules, subject to penalty or suspension for negotiating for other employment in his trade while still in employment.

It was held that the exceptions provided by Section 61 of the Act could not be pleaded by the claimant as the Union rules were not a material cause of his separation nor would he have lost his right to membership by remaining where he was. The claimant was therefore held to have failed to prove he had just cause for voluntarily leaving, particularly as the claimant, who

was employed in a highly specialized, highly paid occupation, failed to show that before leaving he had sought assurances of any kind from anybody with respect to other employment (as unanimously found by the board of referees). Also the claimant failed to show he had no reasonable alternative to separation, on the basis of having carefully examined the possibilities of moving his residence closer to the plant's new location and established such move would have entailed such considerable inconvenience or undue hardship as to make it unfeasible.

The three weeks' duration of the disqualification appeared to take any extenuating circumstances into account and being unanimously endorsed, was left unchanged.

JURISPRUDENCE: Followed in CUB 1603.

Appeal of claimant's Union dismissed.

October 6th, 1958 (Affirmed)

CUB 1576

ADJUDICATION PROCEEDINGS (Evidence—claims record).

SUITABLE EMPLOYMENT (Availability—disq. only for refusal, Change from usual conditions, occupation and wages, Conditions of work—experience, hours and days, shift work, skilled, Domestic circumstances, Duration of unemployment, Good cause not shown, Prevailing rate, Reasonable interval, Voluntarily left previous employment—subjective reasons (pregnancy)).

Section 59(1) of the Act

A 31 year old married woman was laid off after 12 years, on March 31st, 1957, from her employment as a bookkeeper, at \$57.00 a week by reason of her pregnant condition. She gave birth in June 1957 and, at the time of renewing claim on December 18th, 1957, gave the name of a person who would care for the child if she obtained employment. On April 3rd, 1958, the claimant refused an offer of employment as a sales' clerk (selling tobaccos and attending switchboard) in a local hotel at \$30.00 a week, the prevailing rate, for a net total of 42 hours in shift work over six days, including every second Sunday.

The claimant was disqualified for her refusal and a majority of the board of referees confirmed it, the dissent being based on work being out of claimant's line and requiring other than daytime hours.

It was held the work was suitable under Section 59(3) as it was at the prevailing rate and offered after a "reasonable interval" of unemployment (nine months, without including six weeks both before and after confinement—as per CUBs 1152A and 1468—and four months on claim). As regards "good cause," "if she had been eager to obtain employment, she would have applied for that job and let the prospective employer decide whether or not she possessed the necessary qualifications", as in CUB 1350.

Nor are her family responsibilities "good cause" inasmuch as the protection of "the integrity of the home" cannot be absolute under the Act (CUB 935). Domestic circumstances must be given consideration but at the same time be viewed in relation to all the other factors in the case, the most important of which being the duration of unemployment (8½ months out of market and fourteen weeks on claim) during which the claimant should adjust these circumstances to the exigencies of the labour field (CUBs 887, 961 and 1113), so as to be ready to take work on same basis as

single women, unless her circumstances are exceptional (CUB 1113, 5½ months unemployed and nine weeks on claim).

JURISPRUDENCE: CUBs 1152A and 1468 referred to and CUBs 1350 q., 935, 887, 961 and 1113 q., applied.

Appeal of claimant dismissed.

October 6th, 1958 (Reversed)

CUB 1577

ADJUDICATION PROCEEDINGS (Board of Referees, familiar with local situation, unanimous—finding of fact, Disqualification—joint, Evidence—statements after disqualification, Insurance officer generally, Jurisdiction of Umpire re aspect not brought to appeal, Umpire—decision).

AVAILABILITY (Domestic circumstances, Intention of claimant, Restricted as to area and duration, Temporary non-availability, Voluntarily left—just cause).

VOLUNTARY LEAVING (Availability questionable & joint disq., Change of residence entailed, Domestic circumstances—temporary, Just cause shown, Prospects of other employment—general, Tantamount to V.L.).

Sections 54(2)a) and 60(1) of the Act

A 37 year old single claimant lost his employment on March 27th, 1958, after 17 years as a sleeping car conductor when the railway company abolished its use of Edmonton as a terminal. The claimant who lived there with his parents, was unable to take immediate advantage of his seniority to transfer in the same occupation to Winnipeg or Vancouver and did so only as of July 2nd, 1958, being placed by the employer on temporary leave of absence or lay-off for three months for this purpose.

The claimant was disqualified as tantamount to voluntarily leaving without just cause and for unavailability for work during such period. The board of referees unanimously upheld the first and removed the second disqualification on the grounds the claimant was seeking other work in Edmonton.

It was held that the claimant could not be said to have voluntarily left in view of the board's finding that "the job the claimant was holding was abolished". As to availability, if it were true that the claimant was granted leave of absence, he might have been disqualified while remaining in Edmonton but no appeal was taken against the board's finding to the contrary and the question was accordingly not before the Umpire.

Appeal of claimant's union allowed.

October 14th, 1958 (Varied)

CUB 1578

ADJUDICATION PROCEEDINGS (Board of Referees, majority decision—finding of fact reversed, Evidence—burden on administration, credibility, employment officer opinion, statements before and after disqualification, Insurance officer, general).

AVAILABILITY (Domestic circumstances, Proof, Prospects of employment, Restricted as to area, Voluntarily left—just cause).

Section 54(2)a) of the Act

A 28 year old claimant voluntarily left her employment, after over seven years, as a highly paid secretary in a large city for the purpose of

getting married, following which she and her husband took up residence in a suburban community at some remove from her usual type of employment market.

The claimant was disqualified as not available for work from the date of her claim. In her appeal to the board of referees, she stated she was willing to accept work not only in her own community as in her original statement but also anywhere as far south as the limits of the metropolitan city where her husband worked. The employment officer reported that opportunities for employment in these areas were practically non-existent. The board of referees upheld the disqualification by majority decision. The dissenting member felt it should be removed as of the claimant's statement in appeal widening her availability to areas where he considered there were many types of industries.

Upon appeal, it was held that the claimant was not available so long as she restricted her availability to her own small community. She was held to be available as of the date she had extended her availability to other outlying communities of the metropolitan area. In this regard, she was given the benefit of doubt on the key question whether there were opportunities of employment within her capabilities in this larger area. This was purely a question of fact on which the dissenting member's statement regarding "many types of industries" was considered more impressive than the vague reference of the employment officer, the record containing insufficiently detailed information; furthermore it was not clear whether the latter's statement dealt also with all the types of employment the claimant was capable of performing in view of her qualifications and experience.

Appeal of claimant allowed in part.

October 24th, 1958 (Affirmed)

CUB 1579
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, familiarity with local situation, unanimous—finding of fact, Evidence, burden of proof on claimant, employment officer opinion, Question of fact).

AVAILABILITY (Domestic circumstances, Proof, Prospects of employment, Restricted as to occupation and wages, Suitable employment refused—joint disqualification and Voluntarily left in first place).

SUITABLE EMPLOYMENT (Availability, Change from usual occupation and wage rate, Conditions of employment—experience, piece-work, wages, Duration of unemployment long, Good cause not shown, Prevailing rate, Reasonable interval, Trial, Voluntarily left last employment—subjective reasons).

Sections 54(2)a) and 59(1)a) and (3) of the Act

A 35 year old married claimant who had been employed over a period of 10 years as a burler in the felt finishing department of a local manufacturer, had terminated her last period of employment lasting two months, on account of sickness. Two and a half months later she had applied for benefit stating she had been authorized to work by her doctor a week previously. Six months later she refused an offer of employment as an apprentice seamstress at .45¢ an hour in a local cotton dress factory, on the grounds that she would not accept less than her usual rate of .81¢ an hour by reason of her domestic expenses and furthermore was not interested in learning a trade. The employment officer reported the .45¢ rate was a guaranteed minimum,

a piece rate system being in effect, and also that the possibility of the claimant obtaining work at .81¢ an hour was very slim.

The insurance officer disqualified the claimant from the date of her refusal, under Section 59 and under Section 54(2)a) as not available. The board of referees unanimously upheld the disqualifications.

Upon appeal it was held that the employment offered was suitable, according to Section 59(3), because there had been a lapse of a reasonable interval in that the claimant had been unemployed for more than seven months and in receipt of benefit over five months. Furthermore, the claimant did not have good cause for refusal; since the employer needed only an apprentice, the claimant should have accepted the employment and given it a fair trial leaving the said employer to decide whether she was the type required (CUB 1350). As regards the claimant's availability, it was held that inasmuch as this was entirely a question of fact and the burden of proof was on the claimant, there was no reason, in the absence of contrary evidence, to disagree with the unanimous board, which is considered to be conversant with labour market conditions, that her restrictions had made her unavailable.

JURISPRUDENCE: CUB 1350 followed.

Appeal of claimant's union dismissed.

October 24th, 1958 (Reversed)

CUB 1580
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous, Disqualification, extenuating circumstances, Interpretation).

CAPABLE OF WORK (Sickness benefit).

CLAIMS MATTERS (Waiting Period).

Sections 54(2)a), 55 and 66 of the Act

Ten weeks after a claimant had established an initial claim for benefit and been in receipt of benefit on the basis of his weekly reports, the local office learned that the claimant, on the very day he had filed claim, had broken both legs in an automobile accident and been consequently incapable of work since.

The claimant was disqualified from benefit by virtue of Sections 54(2)a), 55 and 66 of the Act. The board of referees rescinded the disqualification unanimously.

Upon appeal, it was held that as entitlement to benefit can only be acquired upon the expiration of the waiting period (CUBs 1341 and 1493) and as relief under Section 66 can only be granted provided the claimant was entitled at the time he became incapable of work, the claimant was properly disqualified, compassion not being grounds for a decision under the Act.

JURISPRUDENCE: CUBs 1341 and 1493 followed.

Appeal of insurance officer allowed.

October 24th, 1958 (Reversed)

CUB 1581

ADJUDICATION PROCEEDINGS (Board of Referees, rehearing, unanimous—reversed, Commission's responsibility re claims procedures, Estoppel, Evidence—employer information, statements after Board of Referees, Interpretation).

EARNINGS (Allocation, Holiday pay, Overtime credits, Retainer, Usual remuneration).

UNEMPLOYED (Contract of service, Leave compensatory and seasonal, Off-season unemployment, Usual remuneration).

*Sections 54(1), 57(1) and 80(1) of the Act
and
Section 158(2) of the Regulations*

The claimant filed a renewal application on December 19th stating he had been laid off at the end of the navigation season after six months' employment as assistant chief electrician for National Harbours Board at Churchill. The employer stated that the claimant would receive, subsequent to separation, nine days' annual leave and 46 days' overtime pay after which he would be placed on a retainer of one third his regular salary, starting February 27th until the commencement of the new season.

The claimant was disqualified as not unemployed from the date of layoff until February 27th in view of receiving his usual remuneration during this period. The board of referees unanimously rescinded the disqualification on the grounds the claimant was not on leave after his layoff, as in CUBs 246 and 1443, and that the payment of overtime after annual leave was not a condition of the contract of service but a matter of company policy (as opposed to CUB 1443). On receipt of new evidence from the employer indicating the terms of service were not substantially different from those in CUB 1443, the board reheard the case. It unanimously reaffirmed its previous decision on the grounds the claimant had not been advised in advance by the Commission that he would not receive benefit while on compensatory leave; the board conceded, however, that new employees would be in a different situation.

Upon appeal, it was held that as a plea of estoppel cannot be invoked if, by allowing it, it would have the effect of directly contravening the provisions of a statute, the Commission, as an agency of the Crown, could not be said to be prevented from applying the Act to refuse benefit in the present case. It was noted that the decision had academic interest as regards the claimant inasmuch as the benefit paid to him could not be recovered in view of Section 80(1) of the Act.

JURISPRUDENCE: CUB 1443 applied. Applied in CUBs 1590 and 1655.

Appeal of the insurance officer allowed.

October 28th, 1958 (Varied)

CUB 1582

ADJUDICATION PROCEEDINGS (Board of Referees, *ultra vires*, unanimous—varied, Disqualification procedure, Evidence—burden of proof on claimant, employment officer opinion, Insurance officer—general).

AVAILABILITY (Disqualification procedure).

SUITABLE EMPLOYMENT (Availability—disqualified only for refusal, Change from usual wage rate, Good cause not shown, Prevailing conditions, Proof, Prospects of other work, Suitability of offer—pregnancy, Trial, Voluntarily left last employment also).

Sections 54(2)a) and 69 of the Act

A 26 year old married claimant, who had been employed for eight years as a clerk-typist at a salary of \$255. a month, had voluntarily left because she was unable to arrange transportation in future. A disqualification under Section 60(1) was removed upon satisfactory explanation in this regard. Nine weeks later on February 27th, she refused an offer of employment as a typist in a boys' college at \$40.00 for a 30-hour week of six hours a day although transportation was available, on the grounds the salary was too low. The local office commented that the claimant although pregnant and expecting to be confined October 1st, seven months later, was considered suitable.

The claimant was disqualified under Section 59(1)a). The claimant in her appeal queried her acceptability by the religious authorities who ran the boys college, by reason of her condition. The local placement officer reaffirmed her suitability until the college closed at the end of June. The board unanimously upheld the disqualification and imposed another as not available from April 6th. Upon the claimant appealing, the board reheard the case but reaffirmed its decision.

Upon further appeal, it was held the employment offered, being in the claimant's usual occupation, was suitable under Section 59(2)b), in the absence of evidence it was not at the prevailing rate. The least the claimant could have done to show her eagerness to work was to apply and let the prospective employer decide her suitability and not having done so, her reasons were held to not constitute good cause.

It was also held that inasmuch as the insurance officer had not, pursuant to Section 69, declared the claimant disqualified nor referred the claim to the board, the board finding under Section 54(2)a) was beyond the board's jurisdiction (*ultra vires*) and therefore (CUBs 1221, 1308 and 1529) a nullity.

JURISPRUDENCE: CUB 1221, 1308 and 1529 followed.

Appeal of claimant dismissed except as regards Section 54(2)a).

October 31st, 1958 (Affirmed)

CUB 1583
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, familiarity with local situation, unanimous—finding of fact, Evidence, burden of proof on claimant, Question of fact).

AVAILABILITY (Proof, Prospects of employment, Restricted as to occupation and wages, Suitable employment refused—joint disqualification).

SUITABLE EMPLOYMENT (Availability, Change from usual occupation and wage rate, Conditions of employment—experience, piece-work, wages, Duration of unemployment long, Good cause not shown, Prevailing rate, Reasonable interval, Trial).

Sections 54(2)a) and 59 of the Act

A 49 year old married claimant had registered for claim as a doffer, stating she had last worked as a piecer with a tire company's cotton plant for a period of sixteen months. Five months later, she refused an offer of employment as an apprentice seamstress with a local cotton dress manufacturer at a guaranteed wage of 45 cents an hour for a 48-hour week (a piece-work system also in effect) because she did not wish to work elsewhere than for her former employer.

The claimant was disqualified under Section 59(1) and 54(2)a) of the Act. The insurance officer noted there was a production slowdown at such employer's and lately lay-offs. The claimant appealed on the grounds she had no experience and the wage rate was lower than the \$52.00 a week she had formerly earned. The board of referees unanimously upheld both disqualifications.

It was held the employment offered was suitable under Section 59(3), even though not in her usual occupation, by reason of the lengthy period of unemployment, the claimant not having denied it was at the prevailing rate. Nor did the claimant have good cause for refusal; she should have accepted the offer and given a fair trial leaving the employer to decide whether she met the apprentice requirements (CUB 1350).

As regards availability, it was held that inasmuch as this was entirely a question of fact and the burden of proof was on the claimant, there was no reason, in the absence of contrary evidence, to disagree with the unanimous board, which is considered to be conversant with the conditions of the labour market, that her restrictions made her unavailable.

JURISPRUDENCE: CUB 1350 applied.

Appeal of claimant's union dismissed.

November 7th, 1958 (Reversed)

CUB 1584

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Evidence—burden of proof on claimant, employer information, statements after disqualification and Board of Referees, Umpire—hearing).

LABOUR DISPUTE (Conditions of employment, Directly interested, Duration, Financing, Participation, Picketing, Proof, Relief, Union membership, Voluntary Leaving).

Section 63(2) of the Act

A millwright (one of 350 union and 20 non-union members engaged as millwrights, welders, painters, bricklayers and general labourers) lost

his employment when his construction company halted its project and sent him a lay-off notice as part of a lockout of union carpenters (150 to 190) by all twelve general contractor members of the local builders' exchange after negotiations broke down for a new collective bargaining agreement between the latter and the local Building and Construction Trades' Council (Carpenters Section), local of the United Brotherhood of Carpenters and Joiners. The lockout lasted 17 days.

The claimant was disqualified under Section 63 for the duration of the stoppage. At the hearing of the board, which unanimously upheld the disqualification, it was established for the first time (as per the insurance officer's representative before the Umpire) that the millwrights were not covered by any agreement and were not included in the unit of negotiations comprising the carpenters but rather that the carpenters' union had obtained only latterly a certificate as negotiating agent for the millwrights, indicating clearly the claimant had no direct interest. Furthermore, it was established that tradesmen other than carpenters had crossed the picket line and performed whatever work was available to them. The board concluded there was evidence there had been no withdrawal of labour to honour the carpenters' picket line and accordingly that no member of the claimant's grade or class had participated in the dispute.

Upon appeal, it was held, as per the submission of the insurance officer's representative, that the evidence before the board showed the claimant to have proven entitlement to relief under Section 63(2) of the Act. This decision was applied also to the decision of another board which had erroneously found that although no financial assistance of any kind had been given out of the Brotherhood's funds to the carpenters, the claimant, who was a member of and had paid fees to the Brotherhood, had nevertheless financed the dispute because such fees "in the event of future labour troubles could be used to finance labour negotiations."

Appeal of claimant's union allowed.

November 12th, 1958 (Affirmed)

CUB 1585

ADJUDICATION PROCEEDINGS (Board of Referees, majority—credibility, Evidence—burden on claimant, employer information, medical certificates, presumption, statements before and after disqualification).

AVAILABILITY (Defined and Described, Efforts to find work, Intention of claimant, Pregnancy, Presumption of non-availability, Proof, Prospects of other employment, Restricted as to light work, Retired from regular employment, Voluntarily left—disqualified only as Not available).

Section 54(2)a) of the Act

A 23 year old married claimant who had been employed in a government department as a clerk-typist for a period of almost two years, registered for employment in the same category and applied for benefit stating that she had voluntarily left, effective the previous day, as she was "at the beginning of pregnancy and feeling quite ill". She also stated she expected to be confined about six months later and now felt better and capable of work.

The claimant was disqualified under Section 54(2)a) on the grounds she had voluntarily left her employment because of pregnancy and was therefore to be presumed not available for work until after confinement

(CUB 1308). In her appeal the claimant stated she had given her employer two months' notice not knowing at the time she was pregnant and had left on the advice of her doctor who had suggested a change of job because of nervous tension. A medical certificate was enclosed to the effect she was now in good health and could do light work and a change of position would be beneficial. The employer sent a copy of the claimant's resignation in which she gave as her reason for resigning her "wish to take up household duties". A further medical certificate was then submitted confirming the expected date of confinement and stating that "the claimant was unaware of her pregnancy until five days after she had resigned". The board of referees upheld the disqualification by a majority decision.

Upon appeal it was held that the claimant had failed to rebut, as per the majority of the board, the presumption of non-availability existing by reason of her pregnant condition, availability implying that a claimant must be able, willing and ready to accept immediately any offer of suitable employment (CUB 1184). Although the claimant may have been in good faith, the evidence was contradictory and under the circumstances there was no valid reason to disagree with the board, particularly as the claimant quit her employment without having any prospect of other employment and even without enquiring about the possibilities of obtaining leave of absence or a transfer, withdrew all her contributions from the superannuation fund and registered for the same kind of work which she allegedly had left for health reasons.

JURISPRUDENCE: CUB 1184 referred to.

Appeal of the claimant dismissed.

November 12th, 1958 (Affirmed)

CUB 1586
(French)

ADJUDICATION PROCEEDINGS (Commission's responsibility re claims procedures, Disqualification procedure, Estoppel, Interpretation).

CLAIMS MATTERS (Overpayment of Benefit and Recovery).

EARNINGS (Allowable, Bonuses, Reporting).

Sections 172(1) & 173(1) of the Regulations

In the case of a claim established at the weekly rate of \$28.00 with \$11.00 accordingly as the amount of allowable earnings, it was discovered that whereas the claimant had reported weekly earnings of \$29.00, \$20.00, 28.00 and 41.00, his employer reported the claimant to have earned \$42.07, \$26.25, \$42.24 and \$54.21, respectively. The claimant explained that the difference between the amounts constituted bonuses, the amounts of which he had not known at the time he had completed the weekly reports.

An overpayment was consequently set up. The claimant appealed but the board of referees unanimously upheld the overpayment.

Upon appeal, it was held that "bonuses" received by a claimant as an inherent and substantial part of his remuneration from an employer in connection with past services performed for the latter are earnings to be taken into account for the purpose of determining the amount of benefit payable and are to be allocated to the period for which earned or paid.

It was held further that there was nothing in the Regulations or the Commission's instructions to the claimant which would restrict the Commission's right to require repayment of benefit overpaid him through his failure to report such earnings.

Appeal of the claimant's union dismissed.

November 14th, 1958 (Reversed)

CUB 1587

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, reversed, Evidence—employment officer opinion, statement before disqualification).

AVAILABILITY (Domestic circumstances, Proof, Prospects of employment, Restricted as to area, hours—part-time—and travel, Suitable employment refused—joint disqualification, Voluntarily left).

SUITABLE EMPLOYMENT (Availability—joint disqualification, Duration of unemployment brief, Good cause shown, Prospects of other work, Voluntarily left last previous employment also—subjective reasons, disqualified for voluntarily leaving).

Sections 54(2)a, 59(1)a and 60(1) of the Act

A 27 year old married woman who had worked as a part-time stenographer from 1 to 5 P.M. five days a week for approximately fifteen months, had voluntarily left due to the additional travelling time entailed by her change of residence to a more distant part of the city. She had been disqualified under Section 60(1) and at the expiration of the disqualification had renewed her claim and weekly reporting. A month later she was offered full-time steady employment as a stenographer in center town at a salary ranging from \$45.00 to \$55.00 a week, the prevailing rate being reported to be from \$50.00 to \$57.00. She refused it because she was unable to work full-time due to domestic responsibilities. The employment officer reported that the claimant's prospects of resuming her usual occupation were "good".

The claimant was disqualified under Section 59(1)a) for her refusal and under Section 54(2)a) because of restricted availability (as in CUB 1290). The board of referees unanimously upheld both disqualifications.

Upon appeal, it was held that the two disqualifications were premature as the possibilities of the claimant obtaining work as a part-time stenographer were at least fair (unlike in both CUBs 782 and 486) and her reason for voluntarily leaving only two months earlier her previous employment of 15 months duration was not considered to be restrictive enough to justify a disqualification for non-availability. Consequently, the claimant was held to have had good cause for refusal and also to be available, CUB 1290 being distinguished (nine months idle and restricted employability to part-time work of a lighter nature than her previous employment).

JURISPRUDENCE: CUBs 486, 782 and 1290 distinguished.

Appeal of claimant allowed.

November 14th, 1958 (Varied)

CUB 1588
(French)

ADJUDICATION PROCEEDINGS (Board of Referees procedure, unanimous—finding of fact varied, Evidence—benefit of doubt, employer information, enforcement officer finding, statement after Board of Referees, Rehearing on Umpire's referral—new fact submitted).

UNEMPLOYED (Earnings, Engaged on own account, Proof, Voluntarily left previously).

*Sections 54 and 57(1) of the Act
and
Section 158(3) of the Regulations*

The claimant had worked as a district travelling salesman for a metropolitan clothing manufacture for a period of three years when he quit (November 30th) because the employer was no longer prepared to pay him a fixed salary. After a delay of three months until his employer had paid the necessary contributions on his behalf, he was paid benefit from the commencement of his claim (December 2nd) until eight months later when he declared in a weekly report having earned \$175.00 in the previous week. Upon investigation at the request of the local office it was ascertained that the claimant had become the local representative of an import firm some time in January. In the claimant's weekly reports during the period of claim, it was noted that he had intermittently reported employment, including a number of weeks for the import company in question.

The claimant was disqualified as not unemployed from December 30th on, as being engaged in business on his own account. The board of referees unanimously upheld the disqualification. The claimant appealed to the Umpire stating that he had always declared he was a travelling salesman but that he had not travelled every week. Information was obtained from the employer indicating that the claimant had been paid substantial amounts of commission at the end of each of the months starting with February. The claimant explained that he had in fact started actual work for this company in February only as he secured an automobile only in the last days of January.

Upon appeal it was noted that the claimant's explanation regarding the delay of one month in commencing actual work had not been known by the board of referees at the time it rendered its decision. However, as this was only a question of date and reference of the case back to the board for rehearing would unnecessarily delay final disposition of the case, the claimant's explanations were accepted and it was held accordingly that the claimant had failed to prove he was unemployed from February 10th rather from December 30th as per the original disqualification.

Appeal of the claimant dismissed.

November 14th, 1958 (Affirmed)

CUB 1589

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, Evidence—benefit of doubt, burden on administration, credibility, statements after disqualification, Interpretation).

LABOUR DISPUTE (Termination of disqualification—bona fide employed elsewhere, regularly engaged in another occupation).

Section 63(1)b) of the Act

The claimant had lost his employment as a steamfitter foreman with a local contractor by reason of a general stoppage of work due to a labour dispute involving all plumbing and heating contractors and had been disqualified for the duration of the said stoppage under Section 63 of the Act. He subsequently became temporarily employed as a steam-fitting instructor at the local vocational institute for a period of seven weeks while the permanent instructor was on summer vacation. At the end of such employment he filed a renewal claim.

The insurance officer continued the original disqualification on the grounds the claimant had failed to prove the temporary employment was in his usual occupation or was a regular engagement in some other occupation. The claimant appealed stating he had been instructing night school sessions in steamfitting for the past two years. The board, on reviewing CUB 478 as well as CUB 1148 to which it had been referred by the insurance officer, unanimously found, on the basis of the evidence, that the claimant was entitled to relief under Section 63(1)b) and that he had become regularly engaged in an occupation so close to his own as for all practical basis to be the same.

Upon appeal the claimant was given the benefit of doubt on the basis that nothing in the evidence indicated one of the claimant's occupation was substantially different from the other, as contended by the insurance officer, and that it was at least doubtful that any essential difference existed. Furthermore, the employment as instructor was bona fide (in accordance with CUB 1148), as submitted by the insurance officer, the evidence showing the claimant's employment as such was under contract of service and even though temporary, had nevertheless been taken in good faith and not for the purpose of evading disqualification.

JURISPRUDENCE: CUB 1148 applied.

Appeal of the insurance officer dismissed.

November 14th, 1958 (Affirmed)

CUB 1590

ADJUDICATION PROCEEDINGS (Chairman of Board of Referees dissenting, Interpretation).

EARNINGS (Allocation, Overtime credits, Usual remuneration).

UNEMPLOYED (Contract of service, Compensatory leave, Usual remuneration).

Sections 54(1) and 57(1) of the Act

and

Sections 158(2) and 173 of the Regulations

The claimant who had been employed as a labourer fireman by a federal government department from January 20th to June 15th, was

laid off with the end of the heating season. The employer reported that the claimant was to be paid from June 16th to June 30th, in lieu of vacation pay and overtime.

The claimant was accordingly disqualified from benefit for the period June 15th to June 28th as not unemployed inasmuch as he was on leave and drawing his usual pay during this period. The claimant appealed stating that the period in question represented overtime leave only as he was not qualified by length of service for annual leave credits; this was confirmed by the employer. The board of referees upheld the disqualification by majority decision; the chairman of the board dissented on the grounds overtime pay was a form of compulsory saving and the case to this extent was different from CUB 246. The claimant appealed on the grounds that compensatory leave was a privilege which could be denied a person, whereas overtime pay was a just claim for wages in respect of work previously performed.

Upon appeal, it was held that, under the present terms of the claimant's contract of engagement, he could not prove he was unemployed during the weeks he was on compensatory leave and for which he was paid the full amount of his usual remuneration, the facts showing that the employer-employee relationship continued to exist as in CUBs 1443, 1458, 1461, 1464 and 1581: although the claimant was not working, he was nevertheless retained on the payroll and subject to superannuation deductions.

JURISPRUDENCE: CUBs 1443, 1458, 1461, 1464 and 1581 applied. Applied in CUB 1655.

Appeal of the claimant dismissed.

November 14th, 1958 (Reversed)

CUB 1591

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Evidence—burden of proof on administration and claimant).

LABOUR DISPUTE (Conditions of employment, Directly Interested, Grade or class, Participation, Picketing, Proof, Shortage of work).

Section 63(2) of the Act

The claimants were apprentices, employed by plumbing and heating contractors, who lost their employment by reason of a stoppage of work at all plumbing installation projects, attributable to a province-wide labour dispute in which the employers locked out the trade's journeymen upon the breakdown of negotiations for a new collective agreement.

The claimants were disqualified under Section 63 of the Act. The board of referees upheld the disqualification on the grounds the claimants belonged to a grade or class of workers who were directly interested in the dispute since their pay rate was set in relation to that of the journeymen.

Upon appeal the claimants were held to be relieved of disqualification pursuant to Section 63(2). There was no evidence of participation in the dispute (unlike in CUB 622) either by refusing to cross the picket line or by any other act of participation such as attending the strike vote meeting. Furthermore, the wages of the apprentices, being governed by provincial legislation, could not be and in fact were not a matter for

direct or immediate negotiation between the parties, neither of whom had any jurisdiction therein. Accordingly, the claimants were not directly interested in the dispute in which the only question at issue (unlike in CUB 622) was an increase in the hourly rate of pay of the journeymen, even though the claimants may, in fact, have benefited by the outcome of the dispute in some respect. Finally, it was held that the claimants could not be said, particularly in the absence of any evidence of participation or financing, to belong to the same grade or the same class as the directly interested workers, in accordance with the principle (CUB 761) whereby "the basis upon which the extension of the terms 'grade' or 'class' must be fixed, relates not only to the nature of the occupation (the apprentices' being different from the journeymen's) but also to the nature of the issue in dispute (increase in the journeymen's hourly rate of pay)".

JURISPRUDENCE: CUB 622 distinguished and CUB 761 applied. Distinguished in CUB 1615.

Appeal of the claimants' union allowed.

November 14th, 1958 (Varied)

CUB 1592
(*French*)

ADJUDICATION PROCEEDINGS (Board of Referees, majority decision—finding of fact, Disqualification punitive, Evidence—burden of proof on claimant, credibility, employer information, statement before disqualification, Jurisdiction of adjudicating authority re aspect raised by adjudication).

CLAIMS MATTERS (Punitive disqualification).

UNEMPLOYED (Earnings, Full working week—hours, etc., Proof, Subsidiary).

*Sections 54(1), 57(1) and 65 of the Act
and
Section 158(1) of the Regulations*

A 30 year old married claimant filed an initial claim on August 23rd after a mass layoff at the factory where he had worked as a doffer for seven years. On June 2nd in the following year he completed a local office questionnaire in which he admitted having passed since his layoff, all his time, an average of seven to eight hours daily, six days a week, at a local gas station performing as and when required (as compared to evenings and weekends only while he had been employed at the factory) the duties of an attendant. He was paid .40c per car wash and estimated his earnings as from \$6.00 to \$8.00 a week, none of which he had reported in the belief he was not required to as they were under \$9.00 a week. In addition, he had the regular use of one of his employer's automobiles for his personal purposes as well as for service to the customers.

The claimant was disqualified from January 19th as having failed to prove he was unemployed and was also disqualified under Section 65 for having falsely declared he was unemployed. The board of referees confirmed the two disqualifications by majority decision; the dissenting member considered the claimant to be employed only on weekends.

Upon appeal, it was held, on the basis of the claimant's own admission and in the absence of any contrary proof and of any precise declarations at the times required in his weekly reports, that the time worked by the

claimant in each of the weeks constituted the number of hours, days and shifts constituting the full working week for that occupation at that garage.

It was held that the punitive disqualification would have been confirmed had it been imposed for false statements with respect to earnings in view of the claimant's lack of good faith in not reporting any earnings in any of the 18 weekly reports in question but that there was no basis, in view of the strict interpretation to be given Section 65, for a disqualification for false statements that he was unemployed in that no such statement was made in any of the weekly reports.

Appeal of the claimant dismissed except with regard to Section 65.

November 21st, 1958 (Affirmed)

CUB 1593

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—credibility, Evidence—burden of proof on claimant, statement after disqualification).

CLAIMS MATTERS (Antedate—circumstances beyond claimant's control or reasonable not to attend local office, good cause not shown).

*Section 46(3) of the Act
and*

Section 150 of the Regulations

The claimant had filed an initial claim on February 4th after being placed on short-time, by reason of a shortage of work, by his employer for whom he had worked as a labourer over the past 16 years. The claimant worked for the most part on a full-time basis from the succeeding May 1st to July 2nd, after which he was again placed on short-time. On filing a renewal claim on July 7th he applied to have it antedated to cover the period June 29th to July 5th, stating that he had delayed his claim because he had expected to be recalled for shift work which did not materialize.

The claim was allowed effective July 6th, but the application for antedate was refused for lack of good cause for delay. The board of referees unanimously upheld the refusal of antedate noting that the claimant had left on July 3rd to visit an uncle who lived 46 miles away and had not returned until July 7th, a Monday. The claimant's union appealed on his behalf on the grounds the claimant had worked short-time during the period for which antedate was requested and could not have made a complete and actual report on his unemployed days of the week ending July 5th until after that date. Furthermore, the claimant had reported to the local office at 5 P.M. July 3rd, his regular reporting day, to find the office closed, at which time he was informed by the local office employee who was standing outside that he could come back the following day; it was contended that such employee however had failed to warn the claimant he would lose his week's benefit if he failed to do so.

Upon appeal, it was held that the claimant had failed to show at least one circumstance of a compelling nature which might reasonably be accepted as a valid reason, and not solely as an excuse, for not attending at the

local office during its usual working hours. The onus was on the claimant to show he was prevented from attending by circumstances over which he had no control (CUBs 116 and 295), or that under the circumstances existing at the time, it was reasonable that he should not so attend (CUB 1454).

JURISPRUDENCE: CUBs 116, 395 and 1454 applied.

Appeal of the claimant's union dismissed.

November 21st, 1958 (Affirmed)

CUB 1594
(French)

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous, Disqualification—extenuating circumstances, Evidence—presumption).

SUITABLE EMPLOYMENT (Availability—disqualified only for refusal, Change from usual area, Transportation facilities, Disqualification duration, Duration of unemployment long, Employment market, Good cause not shown, Suitability of offer—age, Trial).

Section 59(1)a) of the Act

A 20 year old single claimant residing at l'Assomption, P.Q., had filed a claim on January 20th upon being laid off from fourteen months' employment there as a general office clerk at \$31.00 a week from November 1956 to January 1958. On June 25th she refused an offer of employment as an office clerk in a small community 12 miles away although at a salary of \$25.00 to \$35.00 a week according to experience, the local prevailing rate, on the grounds that she would have to travel by bus, the schedules of which would have entailed walking three miles or taking a taxi.

The claimant was disqualified under Section 59(1). The board of referees unanimously upheld the disqualification by reason of the claimant's failure to present herself at the place in question and make a reasonable effort to enquire into the proposed working conditions, but it reduced the period from six to three weeks because of the inconvenient transportation facilities.

Upon appeal, it was held that the claimant, if she had sincerely wished to work, would have accepted the employment; if she was available, as she stated, for work in l'Assomption, Joliette, St. Paul l'Ermite and Montreal, her failure to find any in the five months' period of unemployment despite her youth can be explained only by an almost total lack of interest and of personal effort on her part or by a most exceptional shortage of suitable employments in these places. The claimant could have used the employment offered as a footing while seeking more convenient employment and acquiring experience leading to enhanced remuneration; furthermore, she could have made precise enquiry during her interview with the prospective employer into possible concessions by him regarding working conditions and possible solutions to her transportation problems. The claimant was accordingly held to have been properly disqualified, in accordance with the jurisprudence, the reduction of the period adequately reflecting any extenuating circumstances.

Appeal of claimant dismissed.

November 21st, 1958 (Reversed)

CUB 1595

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, credibility, reversed, Commission's responsibility re claims procedures, Estoppel, Evidence—burden of proof, contributions record, employment history, enforcement officer finding, statements before and after disqualification and after Board of Referees, Insurance Officer—general, Jurisdiction of adjudicating authority re aspect raised by adjudication).

UNEMPLOYED (Earnings, Engaged on own account, Family enterprise, Full working week—hours, part-time, Proof).

Sections 54(1) and 57(1) of the Act

and

Sections 158(1) and (3) of the Regulations

A 33 year old single claimant had filed claim on January 2nd on separation from four years' employment as a sales clerk in a retail furniture firm upon its premises being destroyed by fire. On April 18th the claimant stated that his father was the president and chief stockholder of the firm and that he had been assisting him without remuneration or working any regular hours. Upon investigation at the insurance officer's request, the claimant stated he had spent an average of at least two hours a week selling, but that the full resumption of operations would depend upon the prospects of the local coal industry and the availability of suitable quarters. The enforcement officer reported that the firm was operating from a large previously vacant store but used only a small part of it as an office and sample room for the very small volume of business; furthermore, no one had been paid a salary since the fire and some time would be required for the company to operate at a profit.

The claimant was disqualified as not unemployed from the date of the fire on the grounds he was engaged in business with the company. The board of referees upheld the disqualification unanimously on the grounds the claimant was engaged in a family business venture; it noted that in June of the previous year the claimant had received the sum of about \$1,000., representing 20% of the firm's earnings, as a share of the business profit. In his appeal to the Umpire, the claimant pointed out that the firm had moved on September 18th into new business quarters but that for the nine months previous it had occupied premises less than 1% the size of those destroyed by fire and furthermore, that the company's transactions had not required the full time of even one person.

On appeal, it was held that, inasmuch as the validity of the claimant's contributions as a salaried employee under a contract of service up to the week of December 22nd did not appear to have been questioned at any time, it would be paradoxical to hold that he had since become a person engaged in business on his own account within the meaning of Regulation 158(3). For this reason and in view of the evidence that the claimant had worked a lesser number of hours than before the fire, it was held that the claimant was unemployed during the period in question in that he had not worked the number of hours constituting the full week's work in the occupation or at the premises at which he was employed. The determination and allocation of the claimant's earnings during the period was left to the insurance officer's discretion.

Appeal of the claimant allowed.

November 25th, 1958 (Rehearing)

CUB 1596

(French)

ADJUDICATION PROCEEDINGS (Board of Referees, majority decision, procedure, Commission's responsibility re claims procedures, Evidence—employer information, statements after Board of Referees, Insurance officer—generally, Rehearing on Umpire's referral—new facts submitted and needed).

VOLUNTARY LEAVING—Grievances—raised with employer, Proof—onus on administration, Working conditions).

Sections 60(1) and 76 of the Act

The claimant had been disqualified for voluntarily leaving without just cause. The board of referees, without obtaining a single declaration from the employer or requiring testimony from him at the hearing, upheld the disqualification by majority decision. The claimant appealed to the Umpire and the insurance officer then requested additional information from the employer which the latter furnished.

Upon appeal it was held that the said board should rehear the case generally pursuant to Section 76 of the Act. The information provided by the claimant and the employer contained new facts, that is to say, facts which the board of referees had not had the opportunity to consider before its decision; furthermore, some of the information was not clear, particularly, with respect to the various dates on which the claimant had made representations to the employer regarding the grievances in question and with respect to the delay of the employer in improving the working conditions.

Appeal of the claimant to be reheard.

November 27th, 1958 (Affirmed)

CUB 1597

(French)

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present, examination of witnesses, familiarity with local situation, unanimous, Evidence—credibility, medical certificate, statement before disqualification, Umpire—appeal, leave to).

AVAILABILITY (Capable of work, Intention of claimant, Pregnancy, Presumption of non-availability, Proof, Restricted to light work, Suitable employment refused—joint disqualification, voluntarily left in first place).

SUITABLE EMPLOYMENT (Availability—joint disqualification, Change from usual occupation, Duration of unemployment—long, Good cause not shown, Proof, Suitability of offer—capability, Trial period, Voluntarily left last previous employment—subjective reasons).

Sections 54(2)a), 59, 66 and 73(1) of the Act

A 26 year old married woman had declared on filing claim on March 27th that she had by reason of pregnancy voluntarily left, on September 25th previous, after five months, employment for a manufacturer of men's sport coats in Montreal at \$60.00 a week, had given birth on February 14th and was now available for work, having someone to take care of the child. On June 17th she refused an offer of employment in her registered occupation entailing nine hours a day and 44 hours a week at \$25.00 to \$35.00 per week according to experience, which was the prevailing rate in the district; the employment was with a manufacturer of children's clothing in the town where she now resides, five minutes away by bus. The

claimant gave as her grounds it was not her usual work and submitted a writing from her doctor dated the same day setting forth that she was under his care and that the state of her health would only permit very light work during the next six weeks.

The claimant was disqualified under Section 59 and also as not available under Section 54(2)a) from the date of her refusal. The board of referees unanimously maintained the two disqualifications on the grounds the claimant should have accepted on trial and the medical certificate was really too vague to justify her refusal. The claimant appealed invoking Section 66 of the Act.

Upon appeal, it was held that the coincidence of the claimant's disclosure of her state of health on the same date as the offer of employment cast a serious doubt on the sincerity of all her declarations regarding her availability from the date of her claim and there was no valid reason to differ with the unanimous decision of the board which had the advantage of seeing and hearing the claimant and examining the facts in the light of their knowledge of local conditions. Their decision, being in accordance with the Act and the principles of jurisprudence, should not have given rise to leave to appeal to the Umpire under Section 73(1).

It was further held that in the absence of proof the claimant was incapable of work (CUB 1093), in other words, that it was reasonably probable she could not perform any work whatsoever (CUB 1077), Section 66 of the Act on its very face could not apply.

JURISPRUDENCE: CUBs 1093 and 1077 applied.

Appeal of the claimant dismissed.

November 28th, 1958 (Rehearing)
April 13th, 1959 (Affirmed)

CUB 1598
CUB 1598A

ADJUDICATION PROCEEDINGS (Board of Referees, procedure, unanimous—finding of fact, Evidence—burden of proof on administration, documentary, employer information, employment officer opinion, enforcement officer finding, statements before and after disqualification, Insurance officer generally, Rehearing on Umpire's referral—new facts needed).

AVAILABILITY (Efforts to find work, Proof, Prospects of employment, Restricted as to area, occupation and wages).

Sections 54(2)a) and 76 of the Act

A 27 year old married claimant had filed a claim for benefit on July 4th upon being laid off the week previously, after four years, from employment as a sales-clerk in one of the two grocery stores in the small mid-western town (population 200) in which she resided with her two small children (for whose care she incidentally stated she could make arrangements). The lay-off was because the owner of the store and his wife were endeavouring to operate it by themselves "to save the wages paid", \$30.00 a week. Upon interview by an enforcement officer on July 22nd, the claimant stated she would accept work provided it was in the same village and the same type of work. The officer reported there were no present or impending employment opportunities for the claimant in that village.

The claimant was disqualified as not available for work from August 3rd on. In her appeal to the board of referees on August 11th, she stated

she would accept a job in the office of the local garage or the village post office or even take full-time house work, but that any employment would have to be in the village and at her previous salary. The board of referees unanimously upheld the disqualification.

Upon appeal it was held that the period of five weeks before her disqualification was, in view of the claimant's restrictions and the fact there were only two grocery stores in the village, a "reasonable period" in which to find such employment. However, inasmuch as in her appeal to the board she had widened her availability as long as her salary remained the same, and as the submissions failed to reveal the salaries for such other positions, it was directed the case should be reheard under Section 76 as such information should be contained in the record at all times.

The board, upon rehearing, unanimously upheld its previous decision as employment opportunities in the village in question at the claimant's former salary or at any salary, were virtually non-existent. Upon further appeal, it was held there was no reason to differ with the board's unanimous conclusion in view of its new findings of facts.

Appeal of the claimant dismissed.

November 28th, 1958 (Affirmed)

CUB 1599

(French)

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present, examination of witnesses, unanimous—credibility, Evidence—medical certificates, statements before disqualification, Umpire—appeal, leave to).

AVAILABILITY (While Capable of work, Intention of claimant, Proof, Voluntarily left—joint disqualification).

CAPABLE OF WORK (Availability affected, Proof, Separation from employment in this connection, Sickness benefit).

VOLUNTARY LEAVING (Availability—joint disqualification, Capability for work—cause, sickness benefit, Just cause not shown, Proof—onus on claimant, Tantamount to voluntarily leaving).

Sections 60(1), 54(2)a, 65 and 73(1) of the Act

A 32 year old married claimant had registered for employment as a hand finisher of clothing on November 19th stating that she had worked as such for four years when she was laid off for shortage of work the previous week. On the following March 11th, she declared that she had been laid off at her own request because she had needed a rest and had heard the employer was proposing to lay off a number of employees. On March 17th, she produced a medical certificate in which a doctor stated she suffered from lumbago and obesity, that the doctor had examined her for the first time on December 9th and every four or five weeks thereafter and that she would be capable of resuming work in approximately six weeks.

The claimant was thereupon disqualified for having voluntarily left her employment and also, under Section 54(2)a) in that she had not proved that she was available for work from November 17th and that she was capable for work from December 9th. Furthermore, a disqualification under Section 65 was imposed for false statements with respect to

the reason for her separation, her availability and her capacity for work. The board of referees unanimously upheld the several disqualifications in view of the contradictory evidence. The chairman of the board gave leave to appeal on the grounds there was an important principle involved regarding the interpretation of the value of a medical certificate.

Upon appeal, it was held that the question was a simple one of credibility in view of the contradictory statements on record and that there was no basis for modifying the decision of the board which was in a better position to assess the credibility, having had the advantage of seeing and hearing the claimant as well as of carefully studying the record and the insurance officer's decisions.

It was also held that where the board's decision is exclusively based on a question of credibility, the chairman should not authorize leave to appeal to the Umpire under the guise this simple question constitutes a "principle of importance" or a "special circumstance" within the meaning of Section 73(1).

Appeal of claimant dismissed.

December 4th, 1958 (Affirmed)

CUB 1600

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, credibility, Evidence—burden of proof on administration and on claimant, employment history, enforcement officer finding, statements before disqualification).

UNEMPLOYED (Availability for full-time work despite, Engaged on own account, Farmers, Proof, Voluntarily left previously).

*Sections 54(1) and 57(1) of the Act
and
Section 158(3) of the Regulations*

A 44 year old claimant had filed claim on October 7th stating he had been laid off "for shortage of work" after seven months' employment at a local shop as a butcher at \$70.00 a week; at the same time he had completed a farm questionnaire on the basis of which he was considered to be more of an industrial worker than a farmer. While on claim he reported earnings from slaughtering activities carried on at his premises. Upon investigation the claimant stated to an enforcement officer on the following February 27th, that in addition to operating a farm, he had commenced operating a slaughter house from January 1st; the slaughter house had been built in November 1957, under contract for approximately \$15,000.; he stated most of the slaughtering business was on a custom basis though he had also purchased several animals and poultry for slaughter and sale to various butchers. He later admitted having assisted in the construction of the slaughter house, the construction of which had commenced on October 13th, and the value of which, while not fully completed, he then estimated at \$25,000.

The claimant was disqualified retroactively to October 6th as not unemployed. In his appeal, the claimant stated the amount of work performed on his farm was no greater than that which he had done while in his last employment, and further stated that he had been available for work till March 1st (only). The board of referees upheld the disqualification unanimously.

Upon appeal, it was held the claimant had failed to discharge the onus of proving he was unemployed during the weeks in question, inasmuch as the records failed to show how it would have been possible for the claimant to engage in regular full-time employment outside his premises and still have carried on the work which, by his own admission, he performed in the operation of his farm and the setting up and starting of the slaughter house business.

Appeal of the claimant dismissed.

December 4th, 1958 (Rehearing)

CUB 1601

ADJUDICATION PROCEEDINGS (Board of Referees, claimant (not) present, procedure, rehearing—at Board's instance, Chairman of Board, Disqualification—punitive, Evidence—burden of proof on claimant, statements after Board of Referees, Rehearing on Umpire's referral—new facts needed).

UNEMPLOYED (Availability for full-time work despite, Proof).

*Sections 54(1), 57(1), 65 and 76 of the Act
and*

Section 158(4) of the Regulations

A claimant who had filed claim on November 27th, was disqualified on the following May 8th, retroactively to February 2nd, because he had not proved he was unemployed in that the work he had been performing would have prevented him from accepting full-time employment. Shortly after, a further disqualification was imposed under Section 65 on the grounds the claimant had incorrectly declared he was unemployed during the weeks February 22nd to March 23rd. The board of referees unanimously maintained the disqualifications, the claimant not being present.

Leave to appeal was granted by the chairman of the board on the grounds that the facts stated in the claimant's application for leave were substantially different from those disclosed in the material upon which the decision of the board was made, and that a decision of the Umpire was desirable as to whether or not under those circumstances a rehearing should be directed.

Upon appeal, the Umpire held there were special circumstances to justify a rehearing which he directed should be held, noting that such rehearing could have taken place at the instigation of the chairman of the board without further referral.

Appeal of the claimant to be reheard.

December 8th, 1958 (Rehearing)

CUB 1602

ADJUDICATION PROCEEDINGS (Board of Referees, claimant present, examination of witnesses, procedure, rehearing—at Board's instance, Chairman of Board, Evidence—employer information, statements after Board of Referees, Rehearing on Umpire's referral).

LABOUR DISPUTE (Proof).

*Sections 63 and 76 of the Act
and
Section 182(1) of the Regulations*

In the case of an appeal to the board of referees against a disqualification under Section 63 of the Act, the board of referees held a

hearing at which two claimants and the representatives of their union were the only ones to be heard. Having reached its decision, the board adjourned the hearing only to find that three representatives of the employer had been kept waiting outside, the chairman not knowing they were there. A rehearing was called two days later to which the employee member of the board and the union representatives objected. The three representatives of the employer appeared as well as the union; the claimants were not present due to the failure of the local office to advise them of the rehearing. After hearing the evidence from the employer, the chairman of the board declared the new hearing null and void. The board released a decision unanimously allowing the claimants' appeal, on the basis only of the first hearing. The insurance officer appealed on the grounds all the evidence available had not been presented at a properly constituted hearing.

Upon appeal, a rehearing by the board was directed on the grounds that the claimants, due to a misunderstanding attributable to the board, had not been given a reasonable opportunity as provided by Regulation 182(1), to make representations at the second hearing.

Appeal of the insurance officer to be reheard.

December 24th, 1958 (Affirmed)

CUB 1603

ADJUDICATION PROCEEDINGS (Board of Referees, majority decision—finding of fact, Disqualification—extenuating circumstances, Evidence—burden of proof on claimant, statement before disqualification).

VOLUNTARY LEAVING (Change of income as cause, Extenuating circumstances, Just cause not shown, Proof—onus on claimant, Prospects of other employment—not investigated beforehand, Suitability of employment—given as reasons, Union rules).

Section 60(1) of the Act

A 50 year old married claimant with two dependent children, stated on filing claim that he had voluntarily left his employment as an upholsterer with a manufacturer of chesterfields on the grounds that during the last three months, he had worked only three or four days a week, earning about \$55.00 a week only as opposed to the \$80.00 a week he had earned there during the three previous years.

The claimant was disqualified under Section 60(1) of the Act for a period of two weeks. The board upheld the disqualification by majority decision; the dissenting member contended that the claimant could not seek other employment while still employed, as suggested by the other members of the board, because it was contrary to a union rule although it was admitted such rule was an "unwritten" one.

Upon appeal, it was held that the claimant had failed to show, as is generally required, that he had had assurance of other work before he voluntarily left his less than full-time employment. Furthermore, it was held that the rule in question, even if written, would not give the claimant the benefit of Section 61 of the Act because as in CUB 1575, the claimant had failed to show that the rule was material and that if he had remained in employment, he would have lost the right, by reason of

the union rule, to continue to be a member of his union. It was held further that the two weeks' period of disqualification took into account any extenuating circumstances.

JURISPRUDENCE: CUB 1575 followed.

Appeal of the claimant dismissed.

December 29th, 1958 (Affirmed)

CUB 1604
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, Interpretation, Jurisdiction of adjudicating authority re aspect raised by adjudication but not brought to appeal).

UNEMPLOYED (Availability for full-time work despite, Contract of service, Earnings, Full working week, Holidays—general continuous, Leave—seasonal, Proof, Usual remuneration).

Sections 54(1), 56, 57(1) and 57(2)b) of the Act
and

Sections 155 and 158(2) of the Regulations

A claimant who registered as a general clerk on June 19th, declared that his employment as a school teacher since September 3rd previous, at \$280. a month had just terminated with the end of school for the summer holidays. The information on file indicated that the claimant had received an annual salary of \$2,800. payable in 16 semi-monthly payments the last made on June 23rd; also that the claimant had signed on June 18th a new contract for the next school year, which under provincial law, commenced on July 1st, providing an annual salary of \$3,750. payable in 20 semi-monthly payments of \$187.50, the first to be made on September 15th.

The claimant was disqualified from June 15th on the grounds he had not proven he was unemployed. The board, on the basis of the claimant's testimony, unanimously upheld the disqualification for the period between June 15th and 30th, on the grounds the claimant was paid by and available to the school board during this period, but removed the disqualification from the period July 1st to August 30th on the grounds the school board would have had to pay extra if they had used the claimant's services during the latter period.

Upon appeal, it was held the claimant had not proven he was unemployed during the two weeks commencing June 15th and the 22nd as "his usual remuneration for full working week" was earned and paid him for each such week (Regulation 158(2)). He was held however to have proved he was unemployed during the weeks of July and August as, regardless of the expressions used in the contract of service or the legal duration of the school year, it was contrary to the facts to say the claimant earns or is paid his usual remuneration 12 months of the year, his remuneration being earned and paid only for the 10 months he actually renders services to his employer. The earlier jurisprudence whereby the simple existence of a contract of service was enough of itself for a person bound thereby to be held to have to prove he was unemployed, was held to be no longer applicable as this concept was altered by the new Act (1955); firstly, in allowing a claimant to prove his unemployment on a weekly rather than a daily basis, secondly, by

permitting non-deductible earnings during a week and finally, by allowing a claimant to prove his unemployment for any week during which he did not work the full working week even though under contract of service.

It was further held that the intervening two summer months were only a general continuous holiday, within the meaning of Regulation 155(1), during which accordingly the claimant was unemployed.

Finally, it was held that having regard to the short period of holidays involved, the real question in the case was the claimant's availability for work, but as it was not raised, it was not considered to be before the Umpire for decision.

Appeal of the insurance officer dismissed.

December 29th, 1958 (Varied)

CUB 1605
(*French*)

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact—varied, Interpretation, Jurisdiction of adjudicating authority re aspect raised by adjudication but not brought to appeal).

UNEMPLOYED (Availability for full-time work despite, Contract of service, Earnings, Full working week, Holidays—general continuous, Leave—seasonal, Proof, Usual remuneration).

*Sections 54(1), 56, 57(1) and 57(2)b) of the Act
and*

Sections 155 and 158(2) of the Regulations

A claimant who registered as a salesman on June 27th, declared that he had been employed as a school teacher from January 7th to June 13th, at \$450. a month and had ceased work with the end of school for the summer holidays. The information on file indicated that the claimant had signed on June 6th a new contract for the next school year, which under provincial law, commenced on July 1st, providing an annual salary of \$4,500. payable in 24 semi-monthly payments of \$187.50, the first to be made on September 15th and the contract "entering into effect" only September 1st.

The claimant was disqualified from June 22nd on the grounds he had not proven he was unemployed. The board unanimously upheld the disqualification on the grounds the claimant was in receipt of remuneration and being under contract of service, was on paid holidays.

Upon appeal, it was held the claimant had not proven he was unemployed during the week commencing June 22nd as "his usual remuneration for full working week" was earned and paid him for such week (Regulation 158(2)). He was held however to have proved he was unemployed during the weeks of July and August as, regardless of the expressions used in the contract of service or the legal duration of the school year, it was contrary to the facts to say the claimant earns or is paid his usual remuneration 12 months of the year, his remuneration being earned and paid only for the 10 months he actually renders services to his employer. The earlier jurisprudence whereby the simple existence of a contract of service was enough of itself for a person bound thereby to be held to have to prove he was unemployed, was held to be no longer applicable as this concept was altered by the new Act (1955); firstly, in allowing a claimant to prove his unemployment

on a weekly rather than a daily basis, secondly, by permitting non-deductible earnings during a week and finally, by allowing a claimant to prove his unemployment for any week during which he did not work the full working week even though under contract of service.

It was further held that the intervening two summer months were only a general continuous holiday within the meaning of Regulation 155(1), during which accordingly the claimant was unemployed.

Finally, it was held that having regard to the short period of holidays involved, the real question in the case was the claimant's availability for work, but as it was not raised, it was not considered to be before the Umpire for decision.

Appeal of the claimant allowed.

December 29th, 1958 (Affirmed)

CUB 1606

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—finding of fact, Evidence—employer information, irrelevant to decision, weight of evidence, Interpretation).

LABOUR DISPUTE—(Attributable to Labour Dispute Conditions of employment, Directly interested, Financing, Grade or Class, Incident characteristic of labour dispute, Loss of employment, Participation, Picketing, Proof, Relief, Shortage of work, Union membership).

Sections 2(j) and 63 of the Act

The claimants were labourers whose employment in digging post holes for a power line under construction was terminated by their employer upon a strike being called against all outside electrical construction by three companies in British Columbia. The strike occurred on the breakdown of negotiations to replace collective agreements terminated nine months earlier, which agreements included labourers among the class of workers covered. The dispute lasted from March 3rd to March 28th during which period the inside electrical workers crossed the picket lines and continued with their employment.

The claimants were disqualified under Section 63. The union's legal adviser contended in appeal that the claimants had been ready to work but that the company had not wished them to do so, and also, that labourers, under a wartime order still in force, were specifically excluded from the bargaining unit set up with one of the employers, though it was admitted they were covered, by private arrangements between this employer and the union, in both the old and new bargaining agreements. The board upheld the disqualification unanimously.

Upon appeal it was held that the claimants' loss of employment was not attributable to a layoff by reason of a lack of work as work would have been performed but for the stoppage of work during the labour dispute; the layoff had all the characteristics of an incident which was part and parcel of the stoppage of work attributable to the labour dispute and would not have occurred otherwise. It was held further, with respect to relief under subsection (2), that the claimants were, despite the wartime order, members of the class involved in the dispute. Furthermore, the claimants were held to be directly interested inasmuch as the points at issue in the dispute were an increase in the wage rates, extended holidays

with pay, certain changes in working conditions (such as double time, vacation, overtime and inclement weather adjustments) and certain fringe benefits and the "terms of conditions of employment" of all the employees covered by the proposed bargaining agreement stood to be affected as a class by the settlement of the dispute. The labourers' gain by the settlement, while not a vital factor, served to strengthen the evidence of their direct interest. Finally, it was held that as the claimants were directly interested, it was not necessary to decide whether they had proved that they did not, personally or as members of a greater class, finance or participate in the dispute; to this extent it became completely immaterial whether the claimants had a voice or vote in the strike or had not refused to cross the picket line or had not received strike pay.

Appeal of the claimants' union dismissed.

December 29th, 1958 (Affirmed)

CUB 1607

ADJUDICATION PROCEEDINGS (Board of Referees, majority—finding of fact, Commission's responsibility in adjudication procedures, Disqualification—revision, Evidence—employer information, medical certificate statement before and after disqualification, Insurance Officer—general).

AVAILABILITY (While not fully Capable of work, Prospects of employment, Restricted as to duration and light work, Temporary non-availability).

CAPABLE OF WORK (Availability affected, Proof, Separation from employment in this connection, Sickness benefit, Suitability for employment likely to be offered).

Sections 54(2)a) 66 and 79 of the Act

A 39 year old claimant, with a family of 10, had filed claim following mass layoff on June 27th from his employment as colliery miner after five years. He subsequently worked the weeks commencing July 6th and July 20th. On July 25th he became temporarily separated by reason of illness.

The claimant was disqualified from July 26th as not capable of work pursuant to Section 66 of the Act. In his appeal the claimant stated he was suffering from boils on his neck and under his arm and was capable of performing light work, for instance, as a watchman; he submitted a medical certificate in support. The local office, at the request of the insurance officer, established that the claimant had returned to work on August 25th and was capable of work on August 18th, but the mine was idle. On the basis of these new facts, the insurance officer removed the original disqualification but disqualified the claimant instead as not available for work from July 25th to August 16th. The board of referees upheld the disqualification by majority decision on the grounds of the claimant's restricted availability; the dissent was on the basis that the claimant had sought light work at the colliery but there was none available.

Upon appeal, it was held that the insurance officer had rightly, pursuant to Section 79, removed the disqualification imposed pursuant to Section 66, on the basis of the new facts revealed by the claimant which showed he was capable of work within the meaning of Section 54(2)a). It was further held that the majority finding of the board was in accordance with the Act and the jurisprudence, most recently, CUBs 1538 and 1547,

the claimant not being available in view of the many restrictions such as the lighter type of work and the very limited period of time he would have been available before returning to his regular employment.

JURISPRUDENCE: CUBs 1538 and 1547 followed.

Appeal of the claimant dismissed.

December 31st, 1958 (Affirmed)

CUB 1608
(French)

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous, Commission's responsibility re claims procedures, Evidence—burden of proof on claimant, credibility, presumption, statements before and after disqualification).

AVAILABILITY (Circumstances beyond claimant's control, Pregnancy, Presumption of non-availability).

CLAIMS MATTERS (Antedate, circumstances—beyond claimant's control, unreasonable for claimant to attend local office; good cause for delay not shown, Local office practices).

Sections 46(3) and 54(2)a) of the Act

A 32 year old married woman on seasonal benefit, reported herself as capable and available and accordingly drew benefit for the weeks from December 1st to January 25th. On February 11th she filed weekly reports for the weeks commencing January 26th and February 2nd and declared herself capable and available except for January 27th, 28th and 29th when she had a cold. The same day she completed a declaration to the effect she was pregnant and expected to be confined on March 11th.

The claimant was disqualified under Section 54(2)a) as not available for the six weeks before March 11th, it being explained to the claimant there was a presumption of non-availability for the six weeks before and the six weeks after confinement. The claimant ceased to claim benefit and report weekly until May 6th when she renewed her claim and stated she had given birth prematurely on January 25th. On June 16th, she submitted an application for antedating her claim back to March 9th, stating that she had delayed claiming because she had wished to compensate, by not claiming during 12 weeks, for the six weeks' benefit overpayment she had already received. The board maintained the disqualification unanimously, but granted the claimant leave to appeal on the grounds of her good faith.

Upon appeal it was held that the claimant had failed to show good cause within the meaning of Section 46(3), for the delay in making her claim; according to the established jurisprudence, "good cause" means primarily that a claimant was prevented from attending at the local office by circumstances beyond her control or that under the circumstances prevailing throughout the period for which antedate was requested, it was reasonable she not so attend (CUB 1454). The reason for the claimant's delay was so extraordinary it should have led her to immediately enquire of her rights from the local office rather than take responsibility for doing justice to herself.

JURISPRUDENCE: CUB 1454 applied.

Appeal of claimant dismissed.

December 31st, 1958 (Reversed)

CUB 1609

ADJUDICATION PROCEEDINGS (Board of Referees, unanimous—reversed, Evidence—irrelevant to decision, statements after disqualification and after Board of Referees, Insurance officer—general).

LABOUR DISPUTE (Conditions of employment Directly interested, Financing, Grade or class, Participation, Picketing, Relief, Union membership and procedure).

Section 63 of the Act

The claimants who had an established pattern of part-time employment as shipping clerks, truck drivers and driver's helpers while temporary employees of a local branch of the Brewers Warehousing Company, discontinued their usual daily reporting to their place of employment for whatever work was available, upon a strike being called by the union which was the bargaining agent for all employees. The strike followed a breakdown in negotiations for the renewal of a collective bargaining agreement in which non-monetary issues had taken precedence over the general wage increases the union was seeking; a virtually complete stoppage of work resulted. Under the union security clause of the bargaining agreement, the temporary employees of the Act were subject to a compulsory deduction of union dues even though they were not members of the union.

The claimants were disqualified under Section 63 of the Act. The board of referees, following a hearing at which two claimants and a representative of the union gave evidence, removed the disqualification by unanimous decision on the grounds the claimants had proven their entitlement to relief under Section 63(2). The insurance officer appealed on the grounds the claimants were covered by both the old and new bargaining agreements and were granted an increase in wages under the new agreement, despite oral evidence to the contrary given before the board.

Upon appeal, it was held that the claimants had failed to discharge the onus of proving they had fulfilled all the relieving conditions of Section 63(2). There were points at issue in the dispute—other than those which were related in a general way to the terms and conditions of employment of all the employees—which stood to affect, in a most definite and direct way, the working conditions of the temporary employees, such as the union's demands for an increase in their wage rate and for a radical modification of the union security clauses in the bargaining agreement regarding their eligibility to the status of permanent employees. Accordingly, the temporary employees could not be considered a grade of workers distinct from the class of employees on whose behalf the union was negotiating; consequently such employees were held to be directly interested in the dispute in the same way and to the same extent as all the other workers. Any gain by the temporary employees from the settlement, while not a vital factor, served to strengthen the evidence of the claimants' direct interest. It was also held that as the claimants were directly interested, it was not necessary to decide whether they had proved that they did not, personally or as members of a greater class, finance or participate in the dispute; to this extent it became completely immaterial whether the claimants had a voice or vote in the strike or had not refused to cross the picket line or had not received strike pay.

Appeal of the insurance officer allowed.

DIGEST
of the
DECISIONS OF THE UMPIRE
on Benefit Claims
Under the Unemployment Insurance Act
Since its Inception
IN TWO PARTS

PART I (Volume I)

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FOREWORD

This Digest is designed as a convenient reference to all the decisions by the Umpire on claims for benefit under the Unemployment Insurance Act from its inception to date, that have been cited as authority for its interpretation. These decisions (Canadian Umpire—Benefit: CUB) are to be distinguished from the few decisions by the Umpire on the insurability of employment under the Act (Canadian Umpire—Coverage or Contributions: CUC) which are not the concern of the present work.

Unlike the 1958 Digest already released, the present Digest does not include references to, or summaries of, all decisions rendered during the period covered, that is to say, before 1958. Decisions which were not cited in later decisions as jurisprudence are not digested nor are they even referred to unless they themselves cited an earlier decision in which case such earlier decision is digested herein and they appear, but only as a footnote reference in the summary of that earlier decision.

As pointed out in the Notes on Jurisprudence immediately hereafter, not all of the earliest decisions have been digested however, even though they have been cited later as jurisprudence. Decisions (up to CUB 425 rendered on February 12th, 1949) of which extracts have been printed in the 1950 publication of the Unemployment Insurance Commission, "Selected Decisions", have not been digested unless they were cited in the decisions rendered in 1958 or since.

The present Digest incorporates by cumulative indexes all the index matter contained in the 1958 Release which accordingly can now be discarded, only the individual case-summaries and the text of legislative and regulatory provisions cited therein being of continuing usefulness. The present Digest further provides Statutory References which relate the preceding and present versions of statutory provisions to the standing body of adjudication interpretation from its beginning to present date. It is also intended to issue annual supplements to this Digest covering all later decisions as soon as these become available, with a view to providing the most up-to-date service possible. As regards the content of the Digest, it is hoped that the persons using it will recommend from time to time whatever improvements such usage might suggest.

Users of the Digest are reminded that in examining these decisions for guidance on current claims for benefit, reference should be made to the actual text (provided in Volume I) of the legislative or regulatory provision cited in the decision as being the one in effect at the time of the occurrence of the incident which gave rise to the decision. In certain cases, such provision may differ, by reason of subsequent amendment, from the legislative provision involved in their particular case; accordingly due note should be taken of any such difference and of its effect on the relevancy of the particular decision as guidance in the current claim's adjudication.

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DESCRIPTION AND USE OF DIGEST

(and Notes on Jurisprudence)

The Digest consists for the most part, of individual summaries or digests of decisions rendered by the Umpire on claims for benefit under the Unemployment Insurance Act and Regulations. To facilitate the ready location of appropriate references, the Digest also provides, in addition to a Legislative Index and a Subject Index, a comprehensive Statutory Reference according to which all digested decisions are listed in relation to all the specific statutory provisions cited therein, whether of the Act or of the Regulations. Finally, the Digest contains the full text of every provision cited in the digested decisions.

While in principle every decision that has ever been cited by the Umpire in a later decision has been digested, i.e. indexed and summarized, there are exceptions as explained in greater detail in the Notes on Jurisprudence immediately hereafter. Certain decisions rendered before February 12th 1949 (CUB 425) have not been digested although cited. All decisions rendered in 1958 and since have been digested although some have not been cited as jurisprudence to date.

The digest of each decision sets forth the basic reasoning behind it, using the language of the actual text as much as possible. In addition, all the facts are stated which either had a bearing on the particular decision or which have been held to be material in other decisions involving the same principle, situation or adjudication aspect. Each headnote lists the various adjudication aspects and sub-aspects under which may be found by reference to the Subject Index, digests of other decisions on the same points or facts. The words, "Affirmed", "Reversed" or "Varied", appearing in brackets in a given case digest, after the date on which the decision was rendered, indicate with respect to the finding of the Board of Referees, the tenor of the Umpire's decision. The "Appeal" referred to in the footnote to each case digest always means the appeal to the Umpire, not that to the Board of Referees. The jurisprudence noted under that heading in a case digest refers only to cases cited by the Umpire, unless, in an exceptional case, a special note indicates otherwise.

The digests, being summaries, should not be considered a complete substitute for the actual full-length decisions themselves; these continue to be available for perusal at every local office of the Unemployment Insurance Commission. It should be noted that while translations are made available, the original decision will be in the same language as the case-summary unless an entry in brackets under the CUB number identifying a given case summary specifies the other official language.

The Statutory References indicate for a given year and Section of the Act or Regulations the adjudication subject and by Roman numerals the Index Part in which the relevant decisions may be found, whether under the Legislative (Index) provision or under the Subject (Index) heading. The Statutory References enable the location of all digested decisions rendered under a specific provision of the Unemployment Insurance Act or Regulations since the inception of the legislation in 1940 to date. The

important items in the use of such References are the year the provision was enacted and the section of the Act or Regulations involved. Where these are not known, the year in which a decision was rendered will be sufficient, provided the adjudication aspect involved is also known.

The Indexes, on the other hand, are divided into essentially ten main Parts, according to the main Subjects of disqualification or Adjudication aspects, reflected in the Subject Index. The Subject Index is broken down further into detailed sub-headings under which specific references to the relevant CUBs may be found. Eight of the main headings, for example, **AVAILABILITY, LABOUR DISPUTE, UNEMPLOYED**, represent a major grounds of disqualification.

The Legislative Index, on the other hand, is designed to permit locating immediately by means of the numerical reference to a given Section of the Act or of the Regulations, every decision in which that specific Section was cited (in which case the actual text of the Section is provided in Section 4 of Part I or Volume I). The year in which the Section was enacted, it will be noted, is as important as in the Statutory References. The Legislative Index also permits relating the latest decisions to the earliest, while distinguishing the specific provision involved in each case and its legislative history in relation to both the provision that preceded as well as that which succeeded it.

Of the two (out of ten) main Subject headings which do not represent a major grounds of disqualification, the heading **"ADJUDICATION PROCEEDINGS"** is provided for the detailed indexing of various decisions in which the Umpire has referred by comment or implicitly, to basic principles and practices developed over the years in the course and for the purpose of adjudication, which have been material to the eventual decision in a specific claim. For example, the practices before boards of referees, the rules and value of evidence, the principles of interpretation, etc. It will be noted as a result in individual case-summaries that frequently no specific statutory provision is cited in this group.

The final heading **"CLAIMS MATTERS"** groups all the other miscellaneous legislative provisions which may affect a claimant's entitlement to benefit but in which the number of Umpire's decisions and their effect on claims generally are too minor to justify a distinct main subject heading. For a greater understanding of the scope of this heading, the detailed subheadings themselves should be read. A distinct Sub-part (designated in the Indexes by the addition of a lettered suffix A or B after the Roman numeral of the Part, in the alphabetical order of which the Sub-part occurs) has been assigned to six of these subheadings, because they have given rise to cited and therefore digested decisions before the current Act and Regulations and accordingly decisions have involved earlier versions of the present provisions. All the other subheadings of **"CLAIMS MATTERS"** involve only the current (1955) statutory provisions; for this reason unlike all the other Parts, the Legislative and Subject Indexes have been combined with the result that the Subject subheading, statutory provision(s) and CUB references thereunder are to be found under the Subject subheading only. The only exception is with respect to the six supplementary or sub-Parts referred to above. For these, the volume of cited cases did not justify a more detailed subject breakdown and only a Legislative Index or breakdown has been provided.

In using the Indexes, it will be incidentally noted that a decision may be cited under a number of headings (let alone sub-headings). In many

cases, this is because these main aspects were specifically raised in the particular adjudication by reason of several statutory provisions being invoked. In other cases however, the decision is listed as an example where such aspects were not specifically invoked, for a greater appreciation of the adjudication possibilities in the given situation. Similarly, there might appear to be some duplications as between subheadings of a given aspect or as between several aspects; this detailed cross-indexing was adopted with a view to providing the greatest number of helpful case-references for the least prior information.

Finally, it will be noted that a given decision cited in the Subject Index is immediately followed by a set of brackets containing numbers; these are the references to the various decisions which themselves have been cited in the decision preceding the brackets. This additional information should permit in many cases locating immediately the leading decisions under that subheading or at least the one or two earlier decisions which most fully enunciate the principle involved in that adjudication sub-aspect.

To complete the Digest, there is also provided (Section 4 of Volume I), in order of Section number, the full text of every statutory provision cited in any digested decision. In every case these appear in the numerical order of the year and then the simple numerical order of their numbering, regardless whether of the Act or Regulations.

NOTES REGARDING JURISPRUDENCE

For the purposes of the present Digest, a decision is considered part of the body of authoritative interpretation, or Jurisprudence, only if it has been relied upon in a later decision by the Umpire—as opposed to lesser adjudication authorities—and for this reason was specifically cited by him in that decision. The Jurisprudence Note to be found at the end of every decision summary in the Digest will enable the rapid identification of other decisions that are relevant, that is to say, that either were rendered earlier and cited in the decision summarized, or were rendered later and in turn cited the summarized decision.

All decisions that have been cited later by the Umpire have been digested, i.e. summarized and indexed, with two exceptions. The first exception is with respect to early decisions of which an edited version has already appeared, to wit, in the 1950 publication by the Unemployment Insurance Commission, *Selected Decisions*, the last of which was CUB 425 rendered on February 12th, 1949. Of these edited selections, a digest was made nevertheless in every case where the decision has been cited in a decision rendered after December 31, 1957, so as to incorporate it into the Indexes and also to make available a standard summary with headnotes in the more convenient Digest format. The only other exception is for decisions rendered after December 31, 1957, all of which have been digested in annual series commencing with 1958 (already released), regardless whether cited in later decisions to date or not.

Bold face figure for the CUB number of a decision referred to in the Jurisprudence Note of a decision summary indicates that the decision in question has itself been cited later, and accordingly, unless an asterisk (*) or a dagger (†) indicates the contrary, has been digested in turn. As explained by footnotes in every such case, the asterisk (*) indicates the decision has been printed in “*Selected Decisions*” (ed. 1950) and for that reason, not been digested to date, while the dagger (†) indicates the decision has neither been so printed nor digested to date. The latter were not digested even though cited later because they were cited in pre-1958 decisions that were not themselves cited later as jurisprudence and for that reason were not digested. To distinguish decisions rendered in 1958 or since that as a matter of policy have been digested even though not yet cited to date, and italic type has been adopted.

The symbol “q” after a CUB number means in the case of a decision rendered earlier that it has been quoted in the decision summarized and in the case of a later decision that the summarized decision has been quoted therein.

A cited decision, it will be noted, is, in relation to the later decision, referred to, distinguished, followed or applied (and in two decisions, rejected). “Applied” is used rather than “followed” when the same principle is involved but one or more of the main elements of the later decision are different and the principle in the earlier decision has had to be interpreted or adapted in its application rather than simply followed without change.

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1946	Order in Council P.C. 4012, dated September 26, 1946 and published in The Canada Gazette of September 28, 1946 to take effect October 1, 1946. <i>Section 13 of the Benefit Regulations, 1946—Antedate (Claims Matters)</i>	IA
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Information (See also Employment history)—CUBs 8, 146, 620, 696, 916, 960, 964, 1029, 1044, 1100, 1102, 1138, 1147, 1150, 1193 (1023), 1215, 1221, 1255, 1287, 1307, 1376, 1444, 1449, 1451 (1336), 1456, 1464, 1467A, 1476A, 1482, 1483, 1484, 1511, 1516, 1519, 1523, 1532, 1534, 1540, 1550, 1558, 1569, 1581, 1584, 1585, 1588, 1592, 1595, 1596, 1598, 1602, 1606, 1607.

Responsibility—CUBs 8, 1147 (570), 1150, 1336, 1376, 1515, 1534, 1569.

Enforcement officer finding—CUBs 483, 552, 915, 1146, 1189, 1191, 1207, 1212, 1444, 1463, 1467A, 1486, 1515, 1525A, 1543, 1553, 1566, 1567, 1571, 1588, 1595, 1598, 1600.

Finding of fact, see under **Board of Referees** and also **Question of Fact**.

Irrelevant to decision (See also ***Labour Dispute***—Merits irrelevant)—CUBs 528, 1147, 1215, 1409, 1447-8, 1450, 1453, 1467A, 1468, 1510, 1521A, 1522A, 1530, 1534, 1562, 1563, 1565, 1606, 1609.

Medical certificates and testimony—CUBs 196, 338, 696, 1094, 1097, 1127, 1141, 1183, 1215, 1220, 1221, 1268, 1272, 1376, 1438, 1456, 1462, 1464, 1465 (1221), 1481, 1489, 1497, 1520, 1526, 1539, 1545, 1557, 1585, 1597, 1599, 1607.

Oath (Evidence under)—CUBs 8, 1287, 1386, 1444, 1479, 1481, 1482, 1525.

Onus of proof—See Burden.

Presumption (prima facie) (See also under **AVAILABILITY**)—CUBs 1097, 1138, 1141, 1148, 1191, 1467A, 1499 (930), 1502, 1505 (766 and 1141), 1513 (530, 620, 930, 621), 1519, 1524, 1528, 1535, 1537, 1543, 1552, 1553, 1563 (1249), 1573, 1585, 1594, 1608.

Rules of evidence (See also Burden & Oath)—CUBs 8, 1521, 1522, 1525A.

Rules of Interpretation, see **Interpretation**.

Statements or admissions (See also Credibility).

Before disqualification—CUBs 468, 477, 483, 516, 552, 620, 766, 915, 1029, 1103, 1138, 1146, 1183, 1191, 1207, 1220, 1249, 1268, 1272, 1307, 1340, 1404, 1444, 1469, 1477, 1488, 1499 (930), 1519, 1520, 1525A, 1526, 1531, 1540, 1543, 1550, 1555, 1559A, 1565, 1566, 1571, 1573, 1578, 1585, 1587, 1592, 1595, 1597, 1598, 1599, 1600, 1603, 1607, 1608.

After disqualification—CUBs 468, 477, 516, 1029, 1043, 1052, 1103, 1138, 1150, 1183, 1191, 1207, 1210, 1220, 1249, 1268, 1272, 1287, 1307, 1404, 1438, 1444, 1453, 1454, 1456, 1462, 1469, 1479, 1480, 1481, 1488, 1498 (639), 1505 (1340), 1515, 1520, 1525A, 1528, 1534, 1535, 1537, 1540, 1543, 1545, 1549, 1552 (564, 1220, 1268), 1554, 1555, 1557, 1559A, 1560, 1566, 1567, 1573, 1577, 1578, 1584, 1585, 1589, 1593, 1595, 1598, 1607, 1608, 1609.

After Board of Referees (See also **Rehearing**)—CUBs 468, 552, 1100, 1102 (748), 1141, 1154, 1249, 1268, 1290, 1444, 1453, 1467A, 1481, 1495, 1516, 1523, 1525A, 1543A, 1550, 1559A, 1573, 1581, 1584, 1588, 1595, 1596, 1601, 1602, 1609.

Surveys, local office—CUB 1331A.

Unanimous decision of Board of Referees—See **Board**, unanimous.

Weight of evidence—CUBs 461, 792, 964, 1019 (918, 981), 1097, 1138, 1148, 1191, 1220, 1386, 1404, 1483, 1484, 1488, 1502, 1509 (1484), 1513 (621), 1515, 1519, 1524, 1526, 1532 (Viz.), 1537, 1539, 1540, 1541, 1552, 1554, 1557, 1560, 1567, 1606.

EXTENUATING CIRCUMSTANCES, see **Disqualification**.

FACTS (For Finding of fact, see under **Board of Referees**—majority decision and unanimous; for Question of fact, see under **Question**; for new facts, see under **Rehearing on Umpire's Referral**).

INSURANCE OFFICER (See also **Board of Referees**—rehearing, **Disqualification** and **Jurisdiction**—Aspect raised).

General—CUBs 259 (55), 338, 461, 1101, 1103, 1113, 1129, 1290, 1340, 1386, 1444, 1450, 1452, 1464, 1483, 1484, 1491, 1496, 1498, 1505 (766 and 134), 1509 (1484), 1529 (1251 and 1308), 1537, 1550, 1567, 1577, 1578, 1582, 1595, 1596, 1598, 1607, 1609.

Re-examination after decision—CUBs 447 (62), 552, 1444, 1452, 1545.

INTERPRETATION (See also **Estoppel**, and **MISCONDUCT**—Tantamount to Voluntary Leaving)—CUBs 74, 85, 124, 190, 201, 237, 246, 431 (33, 314), 486, 568, 612 (45), 634, 639, 641, 644, 655, 729 (403), 731, 734, (530, 620, 621), 741, 748, 772 (612), 773, 775, 807 (137), 848, 859, 917, 918, 964, 981, 1015 (832), 1019 (918, 981), 1026, 1035 (540), 1044 (569), 1094 (1093), 1101 (820, 845), 1103, 1111 (530, 620), 1121 (152), 1127 (779), 1129 (888, 734), 1136, 1147 (570), 1148, 1163 (832), 1183, 1210 (280, 711, 941), 1212, 1215 (1093, 1094), 1221 (140), 1255, 1260A (741), 1272, 1287, 1307, 1313, 1331A, 1401, 1403, 1413, 1419, 1442 (1403), 1443, 1445, 1447-8 (641), 1449, 1450, 1452, 1453, 1458 (246, 1443), 1472-3, 1486 (1404), 1487, 1493, 1494, 1503, 1508, 1510, 1515, 1517, 1519, 1522A, 1527, 1528, 1530, 1531, 1532 (Viz.), 1533, 1534, 1542, 1548, 1550, 1556, 1558, 1561, 1562, 1564, 1565, 1566, 1580 (1341, 1493), 1586, 1589 (1148), 1590, 1604, 1605, 1606.

JURISDICTION OF ADJUDICATING AUTHORITY (See also **Board of Referees**—Ultra vires).

Aspect not brought to appeal—CUBs 196, 708, 807, 1215, 1251, 1308, 1386, 1443, 1450, 1453, 1456, 1477, 1508, 1525A, 1527, 1529 (1527), 1559A, 1577, 1604, 1505.

Aspect raised by adjudication—CUBs 8, 217 (171x), 259 (55), 430, 461, 486, 727, 875, 1019 (918, 981), 1026, 1049, 1101, 1129, 1147, 1154, 1183, 1184, 1308, 1443, 1444, 1452, 1488, 1501, 1516, 1527, 1529 (1527), 1532 (Viz.), 1545, 1549, 1554, 1565, 1570 (626), 1592, 1595, 1604, 1605.

Coverage—CUBs 486, 875 (CUC 29), 888 (CUC 30).

Legislation—CUBs 8, 127 (85x), 549, 644, 655, 760, 848, 917, 1045 (848), 1049, 1163, 1212, 1215, 1221, 1469, 1472-3, 1494, 1548, 1556.

Policy—See also **Commission**—CUBs 127, 549, 655 (549), 1101, 1147, 1401, 1458 (1443), 1548.

Procedure—See also **Commission**—CUBs 8, 193, 639, 1331A, 1443, 1563.

Revision of disqualification, see **Disqualification**.

PROOF—See **Evidence**.

QUESTION OF FACT—(For new facts see **Rehearing**: for finding of fact, see under **Board of Referees**—majority decision and unanimous)—CUBs 1444, 1447 (641), 1453, 1466, 1489, 1505, 1510, 1520, 1534, 1541, 1553, 1555, 1559A, 1565, 1566, 1568, 1572, 1579, 1583.

REHEARING (ON UMPIRE'S REFERRAL) (Sec. 76) (See also **Board of Referees**—Rehearing).

New facts submitted—CUBs 1152A, 1467A, 1475, 1481, 1495, 1523, 1525A, 1543A, 1550, 1559, 1588, 1596, 1601.

New Facts needed—CUBs 1100, 1129, 1260A, 1331A, 1386, 1467A, 1476A, 1521A, 1522A, 1550, 1559, 1574, 1596, 1598.

Other Reasons—CUBs 8, 1474, 1507A, 1559, 1602.

UMPIRE

Appeal to (Sec. 73(1))—CUBs 8, 193, 202, 806, 1001, 1019, 1249, 1496, 1597, 1599.

Appellants—CUBs 1438, 1500 (1264, 1285-86-87 and 89, 1438).

Decision—CUBs 8, 196, 605 (341), 639, 641, 655, 734 (530, 620, 621), 888 (CUG), 1101, 1102, 1147, 1260A, 1419, 1447-8 (641), 1450, 1456, 1457, 1493 (1341), 1529 (1527), 1577.

Hearing—CUBs 8, 1100, 1386, 1481, 1532, 1584.

Rehearing (See above).

IA. ANTEDATE (Sections 46(3) of the Act and 150 of the Regulations, 1955)

Legislative Index: Digested jurisprudence cited since the inception of the Act, classified in relation to the legislative provisions cited therein.

- 1940** *Section 30 of the Act* (Amended as Section 36(6), 1946)
CUBs 55, 80, 116.
- 1942** *Section 7 of the Benefit Regulations*: See Section 30 of the Act, 1940. (Amended as Section 13 of the Benefit Regulations, 1946)
CUBs 55, 80, 116.
- 1946** *Section 36(6) of the Act* (Amended Section 30, 1940 and renumbered as Section 38(6), 1953)
CUBs 395, 480, 499, 626, 711, 741, 941.
Section 13 of the Benefit Regulations: See Section 36(6) of the Act.
(Amended Section 7 of the Benefit Regulations, 1942 and amended as Section 122 of the Regulations, 1954)
- 1953** *Section 38(6) of the Act* (Renumbered Section 36(6), 1946 and revised as Section 46(3), 1955)
CUB 1210.
- 1954** *Section 122 of the Regulations* (Pre-1955): See Section 38(6) of the Act.
(Amended slightly Section 13 of the Benefit Regulations, 1946 and revised as Section 150 of the Regulations, 1955)
- 1955** *Section 46(3) of the Act* (Revised Section 38(6), 1953)
CUB 1357 and all decisions thereunder rendered since January 1, 1958: CUBs 1452, 1454, 1478, 1536, 1546, 1549, 1554, 1562, 1570 (1454), 1593 (116, 395, 1454), 1608 (1454).
Section 150 of the Regulations: See Section 46(3) of the Act (Revised Section 122, pre-1955)

II. AVAILABLE FOR WORK (Section 54(2) (a) of the Act—1955)

A—Legislative Index: Digested jurisprudence cited since the inception of the Act, classified in relation to the legislative provisions cited therein.

- 1940** *Section 28(iii) of the Act* (Redrafted as Section 27(1) (b), 1946)
CUB 196.
- 1946** *Section 27(1)(b) of the Act* (Redrafted Section 28, 1940 and renumbered as Section 29(1) (b), 1953)
CUBs 217, 259, 338, 395, 430, 445, 461, 472, 473, 476, 477, 486, 510, 530, 552, 561, 564, 568, 574, 594, 610, 620, 621, 708, 717, 727, 734, 748, 765, 766, 782, 806, 819, 832, 887, 896, 912, 916, 930, 941, 945, 960, 1015.
Section 40(3) of the Act (1946)
CUB 916.
- 1953** *Section 29(1)(b) of the Act* (Renumbered Section 27(1)(b), 1946 and revised as Section 54(2) (a), 1955)
CUBs 1023, 1037, 1043, 1093, 1097, 1101, 1102, 1103, 1111, 1129, 1138, 1141, 1152A, 1154, 1161, 1171, 1175, 1183, 1184, 1189, 1191, 1193, 1207, 1218, 1220, 1251.

1955 *Section 54(2)(a) of the Act* (Revised Section 29(1)(b), 1953)

CUBs 1244, 1246, 1249, 1272, 1290, 1307, 1308, 1329, 1340, 1374, 1376, 1392, 1401, 1409 and all decisions thereunder rendered since January 1, 1958: CUBs 1462, 1468, 1469, 1476A, 1477, 1480, 1481, 1483, 1484, 1485, 1489, 1491, 1492, 1495, 1496, 1499, 1501, 1502, 1505, 1506, 1509, 1512, 1513, 1518, 1519, 1520, 1526, 1527, 1528, 1529, 1536, 1538, 1539, 1540, 1541, 1545, 1547, 1549, 1552, 1554, 1555, 1559A, 1560, 1563, 1573, 1577, 1578, 1579, 1582, 1583, 1585, 1587, 1597, 1598A, 1599, 1607, 1608.

B—Subject Index: Digested jurisprudence cited since the inception of the Act, classified in relation to subject subheadings.

ABSENCE FROM LOCAL OFFICE AREA—CUBs 1183, 1244, 1549, 1554, 1562 (1244).

ANTEDATE involving Availability—CUBs 55, 395 (52, 102, 116q, 286), 711, 941, 1210 (280, 711, 941), 1452, 1454, 1478, 1536, 1549, 1554, 1562.

CAPABLE OF WORK, Available while not fully (See also **Pregnancy**)—CUBs 196, 338, 445, 472, 473 (282), 530, 734 (530, 620, 621), 832, 896, 941, 945, 1093, 1094 (1093), 1097, 1129 (734), 1141, 1183, 1207, 1210, 1215, 1218, 1220 (445, 930, 945), 1313, 1374, 1376, 1454, 1462, 1478 (1340), 1483, 1484, 1491, 1499, 1502, 1509 (1484), 1513 (530, 620, 930 and 621), 1518, 1519, 1520, 1526, 1538, 1545, 1547 (1518), 1555 (1483 and 1484), 1597, 1599, 1607 (1538, 1547).

CIRCUMSTANCES (See also **Domestic, Personal**) beyond claimant's control or deliberately created (See also **CLAIMS MATTERS—Antedate**)—CUBs 55, 430, 574, 711, 819 (430), 912, 941, 1102 (748), 1138, 1161 (1138, 1154), 1492 (1138, 1154 and 1161), 1494, 1541, 1552, 1563 (1374), 1608 (1454).

DEFINITION AND EXAMPLES—CUBs 1489, 1541 (1138), 1585 (1184).

DISQUALIFICATION DURATION (See also **Suitable Employment Refused** and **Voluntary Leaving** hereunder).

Generally (Circumstances affecting duration)—CUBs 530, 1129, 1220 (445, 930, 945), 1469, 1477, 1496, 1499 (930), 1502 (1097), 1528, 1552, 1582.

Indefinite—CUBs 445, 510, 552, 594, 610 (430), 734 (530, 620, 621), 1374, 1392, 1468, 1477, 1478, 1485, 1505, 1526, 1547.

Retroactive—CUBs 1207, 1374, 1481, 1485, 1501, 1505 (766), 1526, 1545, 1549, 1554.

Shortened—CUBs 564, 930 (445), 1043, 1103, 1220 (445, 930, 945), 1462, 1480, 1496, 1505, 1509, 1526, 1528, 1552.

DOMESTIC CIRCUMSTANCES—(See also **Personal** and **Pregnancy**)—CUBs 196, 217 (171x), 259 (55), 430, 472, 476, 486, 510, 530, 552, 561, 564, 568, 574, 594, 610 (430), 620 (530), 727, 748, 782 (476, 486), 887, 912, 930 (530, 640), 1097, 1102, 1103, 1171, 1184 (1103), 1210, 1218, 1272, 1290, 1340, 1409, 1469, 1478 (1340), 1489, 1502, 1505 (1340), 1509 (1484), 1516, 1539, 1540, 1559, 1577, 1578, 1579, 1587.

EFFORTS TO FIND WORK—CUBs 217 (171x), 461 (264, 363), 486, 766, 782 (476, 486), 819, 887, 916 (912), 960, 1138, 1141 (7, 708, 896), 1154 (1138), 1161 (1138, 1154), 1175 (960), 1183, 1191, 1207, 1244, 1246, 1249, 1308, 1376, 1401, 1409, 1483 (484), 1484, 1492, 1496, 1501, 1513 (621), 1528 (1246 and 1249), 1539, 1540, 1560, 1573 (1249), 1585, 1598.

EMPLOYMENT PROSPECTS, see **Prospects**.

ENGAGED ON OWN ACCOUNT, Available While: See **UNEMPLOYED**, Available.

FAMILY ENTERPRISE—CUBs 1191, 1467, 1560.

INDEFINITE, See **Disqualification**.

INTENTION OF CLAIMANT re Availability (For Students, see below)—CUBs 196, 217 (171x), 430, 461 (264, 363), 476, 477, 530, 552, 564, 594, 610 (430), 766, 819 (430), 912, 916 (912), 945, 960, 1015 (832), 1101, 1102 (748), 1141 (7, 708, 896), 1152A (437), 1171 (594), 1184 (1103), 1191, 1207, 1215, 1220, 1272, 1290, 1340, 1376, 1392, 1409, 1462, 1467A, 1476A, 1480, 1496, 1499 (930), 1501, 1502, 1506, 1509, 1513 (620 and 621), 1518, 1527, 1528, 1536, 1540, 1545, 1547 (1518), 1555 (1483 and 1484), 1573, 1577, 1585 (1184), 1597, 1599.

MARRIED WOMEN (See also under **CLAIMS MATTERS**)—CUBs 217 (171x), 259 (55), 472, 473, 476, 477, 486, 564, 574, 594, 887, 912, 1015, 1023, 1101 (820, 845), 1111 (530, 620), 1129 (888, 734), 1141, 1152A (437), 1191, 1215, 1272, 1509 (1484), 1516, 1529 (1527).

PERSONAL CIRCUMSTANCES (See also **Domestic**)—CUBs 594, 620 (530), 717 (384), 930 (530, 640), 1097, 1468, 1477, 1506, 1512 (961), 1562.

PREGNANCY OF CLAIMANT (For Claimant's wife, See **Domestic**)—CUBs 473, 530, 620 (530), 621 (620), 734 (530, 620, 621), 766, 819 (430), 832, 896, 930 (530, 640), 945, 1015, 1023, 1093, 1094 (1093), 1097, 1101 (820, 845), 1111 (530, 620), 1129 (888, 734), 1141, 1152A (437), 1193 (1023), 1215, 1220 (445, 930, 945), 1308, 1329, 1340, 1468 (1152A), 1478, 1480, 1481, 1483, 1484, 1499 (930), 1502 (1097), 1505 (766 and 1141), 1509 (1484), 1513 (530, 620, 621, 930), 1539, 1555 (1483 and 1484), 1585, 1597 (1093, 1077), 1608.

PRESUMPTION OF NON-AVAILABILITY (For **Students**, See below)—CUBs 530, 620 (530), 621 (620), 734 (530, 620, 621), 766, 832, 930 (530, 640), 945 (930), 1015, 1023, 1093, 1094 (1093), 1097, 1111 (530, 620), 1129 (888, 734), 1141, 1171 (594), 1191, 1220 (445, 930, 945), 1246, 1308, 1329, 1392, 1467, 1478 (1340), 1499 (930), 1502 (1097), 1505 (766 and 1141), 1509 (1484), 1513 (530, 620, 621, 930), 1519 (960 and 1175), 1529 (1527), 1536, 1552, 1555, 1560, 1573 (1249, 1563), 1585 (1184), 1597, 1608.

PROOF (See also **Presumption**)—CUBs 196, 445, 530, 552, 734 (530, 620, 621), 766, 832, 887, 930 (530, 640), 1097, 1141, 1183, 1191, 1220 (445, 930, 945), 1374, 1392, 1452, 1454, 1462, 1467, 1469, 1480, 1481 (1376), 1483, 1484, 1489, 1491, 1492, 1495, 1496, 1499 (930), 1501, 1502, 1505 (766 and 1141), 1509 (1484), 1512, 1513 (621), 1519 (960 and 1175), 1520, 1526, 1528 (1496), 1536, 1539, 1540, 1541, 1545, 1552, 1555 (1483 and 1484), 1559, 1560, 1562 (1244), 1563 (1249), 1573 (1249), 1578, 1579, 1583, 1585, 1587, 1597, 1598, 1599.

PROSPECTS OF EMPLOYMENT—CUBs 55, 259 (55), 338, 430, 445, 461 (264, 363), 472, 473 (282), 476, 477, 486, 510, 530, 552, 561, 564, 568, 574, 610 (430), 620 (530), 621 (620), 708, 727, 734 (530, 620, 621), 748, 782 (476, 486), 806, 819 (430), 887, 912, 916 (912), 960, 1023, 1037, 1097, 1101, 1102 (748), 1103, 1129 (888, 734), 1138, 1141 (7, 708, 896), 1152A, 1161 (1138, 1154), 1171, 1175 (960), 1183, 1184 (1103), 1189, 1193 (1023), 1218, 1244, 1272, 1308, 1374, 1376, 1401, 1409, 1462, 1477, 1483, 1484, 1489, 1491, 1492, 1495, 1501, 1502, 1512, 1513 (1484), 1516 (1103), 1520, 1529, 1540, 1541 (1138), 1547 (1518), 1552, 1559, 1562 (1244), 1573, 1578, 1579, 1583, 1585, 1587 (782 and 486), 1598, 1607 (1538 and 1547).

RESTRICTED AS TO

Area—CUBs 55, 217 (171x), 259 (55), 430, 477, 510, 552, 561, 568, 574, 610 (430), 727, 748, 912, 1102 (748), 1103, 1183, 1218, 1392, 1409, 1481, 1485, 1489, 1491, 1492 (1138, 1154, 1161), 1501, 1516, 1529, 1552, 1559, 1577, 1578, 1587, 1598.

Duration—CUBs 445, 461 (264, 363), 530, 574, 620 (530), 734 (530, 620, 621), 896, 1129 (734), 1183, 1189, 1193 (1023), 1215, 1218, 1220, 1477 (594 and 1171), 1483, 1484, 1492, 1495, 1496, 1518, 1519, 1538, 1547 (1518), 1577, 1604, 1605, 1607 (1538, 1547).

Generally—CUBs 338, 620 (530), 819 (430), 912, 941, 960, 1141, 1175 (960), 1189, 1193 (1023), 1220, 1313, 1374, 1476A, 1477 (594 and 1171), 1489, 1491, 1506, 1513, 1520, 1526, 1527, 1545, 1547, 1552, 1555, 1559.

Hours, days—(See Part-time and **Prospects**)—CUBs 196, 476, 717 (384), 765, 887, 1043, 1154, 1161 (1138, 1154), 1272, 1290, 1313, 1374, 1469, 1476A, 1502, 1512 (961), 1520, 1541 (1138, 1154 and 1161), 1587 (782, 486 and 1290).

Light work (See also *Occupation*)—CUBs 530, 896, 945, 1218, 1272, 1290, 1308, 1376, 1462, 1547 (1518), 1585 (1184), 1597, 1607 (1538, 1547).

Occupation—CUBs 477, 552, 561, 574, 708, 896, 912, 916 (912), 1103, 1141, 1218, 1392, 1462, 1468, 1476A, 1501, 1502, 1512, 1520, 1538, 1540, 1547, 1552, 1578, 1579, 1583, 1598.

Overtime—CUB 1540.

Part-time—CUBs 196, 445, 472, 473 (282), 476, 486, 564, 594, 620 (530), 782 (476, 486), 806 (486), 930 (530, 640), 1111 (530, 620), 1171 (594), 1374.

Seasons—CUBs 461 (264, 363), 1102 (748), 1392, 1492, 1495, 1506, 1604, 1605.

Shifts—CUBs 887, 1468, 1512 (961).

Travel—CUBs 55, 217 (171x), 259 (55), 510, 574, 1103, 1183, 1184 (1103), 1481, 1491, 1509, 1512, 1516, 1540, 1559, 1587.

Wages—CUBs 574, 1481, 1485, 1506, 1579, 1583, 1598.

RETIRED OR SEPARATED FROM REGULAR EMPLOYMENT (See also **Voluntarily left**)—CUBs 196, 338, 445, 461 (264, 363), 472, 473, 510, 552, 766, 916 (912), 1129 (888), 1183, 1207, 1215, 1218, 1220, 1313, 1376, 1467, 1476A, 1478, 1491, 1527, 1585.

RETROACTIVE—See under **Disqualification**.

SEASONS, See under **Restricted**.

SEPARATED, see **Retired**.

SUBJECTIVE AVAILABILITY, see **Intention**.

STUDENTS (See also under **SUITABLE EMPLOYMENT**).

Not directed and presumed non-availability un rebutted—CUBs 765, 806, 1037, 1043, 1138, 1161 (1138, 1154), 1189, 1246, 1249, 1307, 1374, 1401, 1492 (1138, 1154, 1161), 1528 (1189, 1246, 1249, 1324 and 1401), 1541, 1563 (1249).

Course's compatibility in relation to usual occupation's.

—Usual working hours—CUBs 765, 806 (486), 1037, 1043, 1138, 1154 (1138), 1161 (1138, 1154), 1246, 1374, 1401, 1492, 1563 (1249).

—Off-season—CUBs 1401, 1492, 1495, 1563 (1249), 1572, 1573.

General unemployment—CUB 1573 (1249).

Intention re work—CUBs 806, 1037, 1043, 1138, 1154 (765 and 1138), 1189, 1246, 1249, 1307, 1374, 1401, 1492, 1495, 1496, 1541 (1138), 1563 (1249).

Direction to course (Sec. 57(3))—CUBs 1496, 1528.

SUITABLE EMPLOYMENT REFUSED (Sec. 59).

General—717 (384), 1152A, 1501, 1539, 1552 (1539).

Joint disqualification—CUBs 477 (302, 394, 407), 568, 782 (476, 486), 887, 1184 (1103), 1251, 1272, 1409, 1468, 1477, 1480, 1485, 1506, 1512, 1529, 1540, 1545, 1559, 1579 (1350), 1583 (1350), 1587, 1597.

Disqualification only as not available—CUBs 217 (171x), 510, 564, 574, 1249, 1290, 1481, 1489, 1492, 1526.

Prior refusal without disqualification—CUB 1468.

Voluntarily left in first place—CUBs 1468, 1477, 1480, 1481, 1489, 1526, 1529, 1539, 1552, 1579, 1597.

TEMPORARY NON-AVAILABILITY (See also **Disqualification Duration** and **Pregnancy**)—CUBs 55, 766, 941, 1183, 1244, 1538, 1562 (1244), 1577, 1607 (1538, 1547).

UNION RULES—CUBs 960, 1175 (960).**VOLUNTARILY LEFT** (See also **Retired or Separated from Regular Employment**).

Delayed claim—CUBs 217 (171x), 473, 561, 912, 1023, 1037, 1191, 1215, 1249, 1251, 1340, 1374, 1452, 1454, 1468, 1480, 1481, 1513, 1520, 1526, 1539, 1541, 1579.

Disqualification only as not available—CUBs 259 (55), 445, 472, 530, 620 (530), 621 (620), 734 (530, 620, 621), 748, 896, 930 (530, 640), 1111 (530, 620), 1141, 1161, 1220, 1308, 1329, 1401, 1489, 1499, 1502, 1513, 1547, 1585.

Disqualification only for voluntary leaving (Sec. 60(1))—CUBs 430, 477, 727, 1308, 1587.

Joint disqualification—CUBs 594, 610 (430), 765, 945, 1015, 1102 (748), 1103, 1171, 1251, 1307, 1329, 1496, 1528, 1552, 1599.

Just cause—CUBs 395, 1097, 1246, 1374, 1513, 1516, 1528, 1529, 1577, 1578.

Voluntary leaving ignored by insurance officer—CUBs 196, 461 (264, 363), 574, 806, 1129 (888), 1152A, 1154, 1184, 1467, 1489, 1513, 1516, 1520, 1529, 1560.

III. CAPABLE OF WORK (Sections 54(2) (a) & 66 of the Act—1955)

A—Legislative Index: Digested jurisprudence cited since the inception of the Act classified in relation to the legislative provisions cited therein.

1946 *Section 27 (1)(b) of the Act* (Redrafted Section 28(iii), 1940 and renumbered as Section 29(1)(b), 1946)
CUBs 338, 395, 445, 472, 473, 530, 620, 621, 626, 734, 766, 832.

1953 *Section 29(1)(b) of the Act* (Renumbered Section 27(1)(b), 1946 and revised as Section 54(2)(a), 1955)
CUBs 1077, 1093, 1183 and 1218.

Section 29(3) of the Act (1953) (Introduced in 1953 and redrafted as Section 66, 1955)

CUBs 1093, 1183, 1218.

Section 30(3)(a) of the Act (1953) (Originally Section 29(2), 1940 redrafted as Section 28(3)(a), 1946; and slightly amended later; revised as Section 45(3)(a), 1955)

CUB 1093.

1955 *Section 54(2)(a) of the Act* (Revised Section 29(1)(b), 1953)
CUBs 1268, 1323, 1341, 1374, 1376 and all decisions thereunder rendered since January 1, 1958: CUBs 1453, 1462, 1483, 1484, 1491, 1493, 1502, 1518, 1519, 1520, 1526, 1538, 1545, 1547, 1555, 1557, 1580, 1599.

Section 66 of the Act (1955) (Redrafted Section 29 (3), 1953)

CUB 1341 and all decisions rendered since January 1, 1958: CUBs 1493, 1526, 1545, 1565, 1580, 1597, 1607.

B—Subject Index: Digested jurisprudence cited since the inception of the Act, classified in relation to subject subheadings.

AVAILABILITY AFFECTED AS RESULT (See also **Pregnancy**)—CUBs 338, 445, 472, 473 (282), 530, 620 (530), 621 (620), 734 (530, 620, 621), 766, 1077 (267, 326, 408), 1093, 1183, 1323, 1374, 1376, 1462, 1483, 1484, 1491, 1518, 1519, 1520, 1526, 1538, 1545, 1547 (1518), 1555 (1483 and 1484), 1597, 1599, 1607 (1538, 1547).

DEFINITION AND EXAMPLES—CUB 1453 (1077).

DISQUALIFICATION DURATION—CUB 445.

MARRIED WOMEN'S REGULATIONS (Reg. 161)—CUBs 779, 832, 1127 (779), 1215, 1221, 1456, 1465 (1221), 1558.

PERMANENT INCAPACITY—CUBs 338, 626, 1077 (267, 326, 408), 1221 (140), 1268, 1323, 1374, 1376, 1454, 1465 (1221), 1557 (1491), 1570 (626).

PREGNANCY—CUBs 473, 530, 620 (530), 621 (620), 734 (530, 620, 621), 766, 832, 1093, 1094 (1093), 1215, 1456, 1465, 1483, 1484, 1502 (1097), 1555, 1558 (1183, 1093, 1094), 1597 (1093, 1077).

PROOF—CUBs 338, 530, 621 (620), 766, 832, 1077, 1127 (779), 1268, 1453 (1077, 1207), 1454, 1526, 1545, 1547, 1555, 1557, 1570, 1597 (1093, 1077), 1599, 1607.

RETIRED FROM FORMER EMPLOYMENT—CUBs 338, 1183, 1491, 1557.

SEPARATION FROM EMPLOYMENT IN THIS CONNECTION (See also **VOLUNTARY LEAVING**)—CUBs 395, 445, 472, 473, 530, 620 (530), 621 (620), 626, 725, 734 (530, 620, 621), 779, 832, 1127 (779), 1146, 1215, 1221, 1268, 1323, 1341, 1374, 1376, 1453, 1454, 1456, 1462, 1465, 1483, 1484, 1502, 1518, 1519, 1520, 1526, 1538, 1547, 1548, 1557, 1558, 1570, 1597, 1599, 1607 (1538, 1547).

SICKNESS BENEFIT (Sec. 66) (See also **CLAIMS MATTERS**—Waiting period)—CUBs 472, 1093, 1094 (1093), 1150, 1183, 1218, 1268, 1341, 1376, 1493 (1341), 1526, 1545, 1557, 1558 (1183, 1093, 1094), 1565, 1580 (1341, 1493), 1597 (1093, 1077), 1599, 1607.

SUITABILITY FOR EMPLOYMENT (See also **SUITABLE EMPLOYMENT—Capability**).

Likely to be offered—CUBs 338, 445, 472, 473 (282), 530, 766, 1077 (267, 326, 408), 1183, 1215, 1268, 1323, 1374, 1376, 1462, 1483, 1484, 1491, 1502, 1518, 1519, 1520, 1538, 1547 (1518), 1555, 1557 (1491), 1570 (626), 1607 (1538, 1547).

Offered and refused—CUBs 1545, 1597.

WORKMEN'S COMPENSATION—CUBs 395 (52, 102, 116q and 286), 626, 1150, 1268, 1376, 1454.

IV. CLAIMS MATTERS

Legislative and Subject Indexes Combined: Digested jurisprudence cited since the inception of the Act in relation to the subject sub-heading involved as well as the legislative provisions cited therein.

ANTEDATE (Sections 46(3) of the Act and 150 of the Regulations, 1955) See under IA—Antedate.

BENEFIT PENDING APPEAL (See **Suspension Pending**).

BENEFIT PERIOD (DURATION, COMMENCEMENT, CANCELLATION) (Sections 45 of the Act and 153 of the Regulations, 1955)—CUBs 1336, 1451.

BENEFIT RATE—See **Rate**.

BOARD OF REFEREES (See **ADJUDICATION PROCEEDINGS**).

CONTRIBUTIONS (Sections 45 and 47 of the Act, 1955) (See also **Qualification**)—CUBs 1336, 1469, 1491 (338), 1548.

DECEASED (See **Trustee**).

DEPENDENCY (Sections 47(3) of the Act and 163 of the Regulations, 1955)—See under IVA—Dependency.

DISQUALIFICATION PERIOD (Section 62 of the Act, 1955)—CUB 1558.

DISQUALIFICATION PROCEDURE, see *ADJUDICATION PROCEEDINGS*.

INCAPACITATED (See *Trustee*).

INMATES OF PUBLIC INSTITUTIONS (Sections 64 of the Act and 170 of the Regulations, 1955).

INSURANCE OFFICER (See *ADJUDICATION PROCEEDINGS*).

LOCAL OFFICE PRACTICES—CUBs 1336, 1451 (1336), 1469, 1478, 1517, 1536, 1546, 1549, 1554, 1562 (1244), 1570, 1608.

MARRIED WOMEN REGULATION (Sections 67(1)(c)(iv) of the Act and 161 of the Regulations, 1955)—See under *VIA*—Married Women's Regulation.

OVERPAYMENT, RATIFICATION, RECOVERY AND WRITE OFF (Sections 67 (3)(b) of the Act and 174 and 175 of the Regulations, 1955)—CUB 1586.

PAYMENT INTERVALS FOR BENEFIT (Sections 82(d) of the Act and 165 of the Regulations, 1955).

PENDING APPEAL, BENEFIT (Sections 80 of the Act and 167 of the Regulations, 1955).

PRESCRIBED MANNER OF MAKING A CLAIM AND PROOF, AND OF REPORTING WEEKLY ETC. (See also *PROOF* under other *MAIN HEADINGS*) (Sections 82(a) and (b) of the Act and 145, 146, 147 and 148 of the Regulations, 1955)—CUBs 1454, 1501, 1517, 1535, 1546, 1549, 1554, 1562 (1244).

PROOF (See *Prescribed* above and also under *MAIN HEADINGS*).

PUBLIC INMATES, see *Inmates*.

PUNITIVE DISQUALIFICATION (Sections 65 of the Act and 145(3) of the Regulations, 1955) See under *VIIA*—Punitive Disqualification (See also *ADJUDICATION PROCEEDINGS—Disqualification*).

QUALIFICATION (Section 45 of the Act, 1955) See under *VIIB*—Qualification.

RATE OF BENEFIT (Sections 47 and 69(3) of the Act, 1955)—CUBs 1469, 1493, 1548.

RESIDENTS OUTSIDE CANADA (Sections 64 of the Act and 169 of the Regulations, 1955).

SEASONAL BENEFITS (Sections 49 to 53 of the Act)—CUB 1494.

SUSPENSION OF BENEFIT PENDING APPEAL (Sections 80 of the Act and 167 of the Regulations, 1955) See under *VIIIA*—Suspension of Benefit Pending Appeal.

TRUSTEE (Sections 67(1)(a) of the Act and 171 of the Regulations, 1955) *In Case of Incapacitated, Deceased or Unsound Mind*.

UMPIRE (See *ADJUDICATION PROCEEDINGS*).

WAITING PERIOD (Sections 55 of the Act and 152 of the Regulations, 1955)—CUBs 1341, 1493 (1341), 1580 (1341 and 1493).

IVA. DEPENDENCY (Sections 47(3) of the Act and 168 of the Regulations, 1955)

Legislative Index: Digested jurisprudence cited since the inception of the Act, classified in relation to the legislative provision cited therein.

- 1946** *Section 31(2) of the Act* (Redrafted paragraphs 1 and 2 of the Third Schedule of the Act, 1940, substituted paragraph (c) and added paragraph (d) and redrafted and amended as Section 31(3), 1950)
CUBs 608, 729.
- 1950** *Section 31(3) of the Act* (Redrafted Section 31(2), 1946 and renumbered as Section 33(3), 1953)
CUBs 731, 741.
- 1955** *Section 47(1) and (3) of the Act* (Redrafted Section 33(1) and (3), 1953)
CUBs 1260A, 1439, and all decisions thereunder rendered since January 1, 1958:
CUBs 1444, 1487, 1510, 1553, 1556.
- Sections 168(1) and (2) of the Regulations* (Renumbering of Section 125, pre-1955).
CUB 1260A.

V. EARNINGS (Sections 42(f) & (g) and 56 of the Act, 1955 and Sections 172 & 173 of the Regulations, 1955)

A—Legislative Index: Digested jurisprudence cited since the inception of the Act, classified in relation to the legislative provisions cited therein.

- 1946** *Section 29(1)(a) of the Act* (Redrafted Section 33(a), 1940 and redrafted as Section 29(1)(f), 1952)
CUBs 246, 338, 598, 707, 915, 1026.
- Section 29(1)(b) of the Act* (Redrafted Section 33(b), 1940 and redrafted as Section 29(2)(a), 1952)
CUB 262.
- 1952** *Section 29(1)(f) of the Act* (Redrafted Section 29(1)(a), 1946 and redrafted as Section 5(2)(f) of the Benefit Regulations, 1952)
CUBs 917, 1026.
- Section 5(2)(e) and (f) of the Benefit Regulations* (1952) (Amended Section 5(2)(e) and (f) of the Benefit Regs., 1951 and redrafted as Sections 5(2)(e) and (f) of the Benefit Regs., 1953)
CUB 917.
- 1953** *Section 5(2)(e) of the Benefit Regulations* (1953) (Redrafted Section 5(2)(e) of the Benefit Regulations, 1952 and redrafted as Section 133, pre-1955)
CUB 1026.
- 1955** *Section 42(f) and (g) of the Act* and Sections 172 and 173 of the Regulations (Consolidated and revised all previous)
CUBs 1313, 1443 and all decisions thereunder rendered since January 1, 1958:
CUBs 1445, 1449, 1458, 1463, 1472-3, 1486, 1531, 1537, 1561, 1564, 1567, 1586, 1590.
- Section 56 of the Act* (Introduced wider concept of allowable earnings in light of "full working week" concept)
CUB 1443 and all decisions thereunder rendered since January 1, 1958:
CUBs 1537, 1567, 1604, 1605.
- Section 158(2) of the Regulations* (Revised to accord with "full working week" concept)
CUB 1313.
- Sections 172 and 173 of the Regulations* (See Section 42(f) and (g) of the Act, 1955, above)

(See also **UNEMPLOYED—EARNINGS**)

B—Subject Index: Digested jurisprudence cited since the inception of the Act, Classified in relation to subject subheadings.

ALLOCATION OF EARNINGS—CUBs 246, 262 (245q), 1443, 1445, 1458 (246, 1443), 1479, 1561 (1443, 1445), 1449, 1564 (1443 and 1445), 1581 (1443), 1590.

ALLOWABLE (Sec. 56—CUBs 1439, 1546, 1548, 1586.

BOARD AND LODGINGS—CUB 1486.

BONUSES—CUBs 246, 598 (258, 420), 917, 1313, 1443, 1458 (1443), 1586.

BUSINESS ON OWN ACCOUNT (See also **UNEMPLOYED**)—CUBs 705, 1439, 1463, 1479, 1537, 1567.

COMMISSION—CUB 705.

COMPENSATION, WORKMEN'S

DETERMINATION OF—CUBs 1479, 1486, 1537.

EXPENSES, See **Net Earnings**.

GRATUITY, See **Bonuses**.

HOLIDAY PAY (See also **Overtime**)—CUBs 246, 1443, 1546, 1561 (1443, 1445), 1564 (1443, 1445), 1581 (1443).

NET EARNINGS (Reg. 172(3))—CUBs 705, 1439, 1537, 1567.

OVERTIME CREDITS—CUBs 246, 888 (CUC 30), 1443, 1458 (246, 1443), 1561 (1443, 1445), 1564 (1443, 1445), 1581 (1443), 1590 (1443, 1458, 1461, 1464 and 1581).

PROOF—CUBs 1439, 1537, 1567.

REINSTATEMENT DAMAGES—CUBs 807 (137), 929, 1445 (1443), 1449 (1443), 1472-3.

REPORTING—CUBs 1439, 1463, 1531, 1535, 1567, 1586.

RETAINER—CUBs 888 (CUC 30), 1581.

RETIREMENT PAY—CUBs 598 (258, 420), 917, 1313, 1451.

SERVICES PERFORMED—CUBs 917, 1445 (1443), 1449 (1443), 1463, 1472-3, 1486 (1404).

USUAL REMUNERATION (See also **Overtime Credits** and **UNEMPLOYED**)—CUBs 246, 598 (258, 420), 807 (137), 917, 929, 1443, 1445, 1449 (1443), 1458 (246, 1443), 1561 (1443), 1564 (1443, 1445), 1581 (1443), 1590 (1443, 1458, 1461, 1464 and 1581).

VI. LABOUR DISPUTE (Section 63 of the Act—1955)

A—Legislative Index: Digested jurisprudence cited since the inception of the Act, classified in relation to the legislative provisions cited therein.

1940 *Section 2 (1)(d) of the Act* (Amended slightly in 1953)

CUBs 190, 751, 762.

Section 31 (b)(i) of the Act (Redrafted as Section 40(2)(a), 1946)

CUB 190.

Section 32 of the Act (Renumbered Section 43, 1946)

CUB 190.

Section 43(a) of the Act (Redrafted as Section 39, 1946)

CUBs 85, 127, 156, 190.

- 1946** *Section 39 of the Act* (Redraft of Section 43(a), 1940 and renumbered Section 41, 1953)
 CUBs 287, 322, 423, 478, 528, 531, 540, 570, 622, 639, 716, 751, 760, 761, 762, 827, 863, 868-9, 870, 890, 891 918, 981, 1019, 1035.
Section 40(2)(a) of the Act (Redraft of Section 31(b)(i), 1940)
 CUB 918.
Section 41 of the Act (Redraft of Section 44, 1940)
 CUB 1035.
Section 43 of the Act (Renumbering Section 32, 1940 and redrafted as Section 61, 1955)
 CUBs 287, 762.
- 1953** *Section 2(1)(d) of the Act* (Amended slightly Section 2(1)(d), 1940 and slightly revised as Section 2(j), 1955)
 CUBs 1121, 1142.
Section 41 of the Act (Renumbering Section 39, 1946 and redrafted without change in substance as Section 63, 1955)
- 1955** *Section 2(j) of the Act* (Slightly revised Section 2(1)(d), 1940)
 All decisions thereunder rendered since January 1, 1958.
 CUBs 1514, 1606.
Section 61 of the Act (Amended Section 43, 1946)
 All decisions thereunder rendered since January 1, 1958.
 CUBs 1530, 1575.
Section 63 of the Act (Redrafted without change of substance Section 41, 1953)
 CUBs 1227, 1271, 1309, 1385, 1386, 1419 and all decisions thereunder rendered since January 1, 1958: CUBs 1446, 1447-8, 1450, 1459-60-61, 1475, 1476A, 1514, 1521A, 1522A, 1530, 1532, 1533, 1542, 1584, 1589, 1591, 1602, 1606, 1609.

B—Subject Index: Digested jurisprudence cited since the inception of the Act, classified in relation to subject subheadings.

APPRECIABLE STOPPAGE—See **Stoppage**.

APPRENTICES—CUB 622.

ATTRIBUTABLE TO LABOUR DISPUTE—CUBs 156 (85), 570, 641, 716 (417), 760, 762, 863, 868 (716), 870 (716, 863, 868), 891 (890), 1050 (321, 760), 1121 (152), 1142, 1147, 1148, 1151 (570), 1227, 1446, 1447, 1448, 1514, 1521A, 1522A, 1530, 1532, 1533 (570 and 1142), 1542, 1606.

CONDITIONS OF EMPLOYMENT (For Union Existence—See below)—CUBs 85, 127 (85, 86, 87), 190, 423 (85, 127, 191, 322), 528, 540, 622, 760, 762 (644), 1142, 1147, 1148, 1151 (570), 1201, 1419, 1446, 1447-8 (751, 1136), 1521A (156, 423, 528, 540, 622, 1121, 1142, 1147, 1309, 1385 and 1514), 1522A, 1530, 1532 (1386), 1542, 1584, 1591 (622), 1606, 1609.

DEFINITION AND EXAMPLES—CUBs 190, 641, 762 (644), 1446, 1522 and 1522A, 1530, 1532, 1533, 1542.

DIRECT INTEREST—CUBs 85, 127 (85, 86, 87), 156 (85), 287 (190), 322, 423 (85, 127, 191, 322), 528, 540, 622, 761, 762, 1035 (540), 1121, 1142, 1147, 1148, 1151 (570), 1201, 1309, 1385 (531), 1419, 1514 (85), 1521A (156, 423, 528, 540, 622, 1121, 1142, 1147, 1309, 1385 and 1514), 1522A, 1532 (1142, 1386), 1533, 1584, 1591 (622 and 761), 1606, 1609.

DISQUALIFICATION (See **Termination**).

DURATION—CUBs 1450, 1514 (570), 1533, 1542 (751, 1147, 1151), 1584.

EXISTENCE OF LABOUR DISPUTE—CUBs 190, 570, 641, 751, 760, 762, 890, 891 (890), 1136, 1147, 1148, 1151 (570), 1201, 1271, 1446, 1447-8, 1450, 1514, 1530, 1532, 1533 (570 and 1142).

EXTENSION OF LABOUR DISPUTE—CUBs 190, 287, 531, 540, 641, 761, 1035 (540), 1142, 1532 (1035, 1142, 1201).

FINANCING—CUBs 322 (85q.), 622, 1309, 1419, 1450, 1459 (1450), 1521A, 1522A, 1584, 1606, 1609.

GRADE OR CLASS—CUBs 85, 127, 287 (190), 322 (85), 423 (85, 127, 191, 322), 528, 531, 540, 622, 641, 761, 981, 1019 (918, 981), 1035 (540), 1142, 1148 (531), 1151 (570), 1385 (531), 1386, 1419 (761), 1450, 1459 (1450), 1591 (761), 1606, 1609.

INCIDENTS CHARACTERISTIC OF LABOUR DISPUTE—CUBs 190, 570, 641, 827, 891 (890), 1151 (570), 1271, 1447-8, 1514 (570), 1530, 1533, 1606.

INSISTENCE AND RESISTANCE OF PARTIES—CUBs 190, 540, 570, 751, 760, 891 (890), 1136, 1147, 1151 (570), 1271, 1447-8 (751), 1533, 1542.

LOCKOUT (See **Sympathetic Strike** or **Lockout**).

LOSS OF EMPLOYMENT—CUBs 156 (85), 190, 540, 716 (417), 863, 868 (716), 870 (716, 863, 868), 1035 (540), 1050 (321 and 760), 1121 (152), 1148 (531), 1151 (570), 1201, 1227, 1385 (531), 1514, 1530, 1532, 1606.

MERITS IRRELEVANT—CUBs 190, 423 (85, 127, 191, 322), 570, 760, 827, 890, 1142, 1147, 1447-8, 1450, 1530, 1533 (570, 827, 870, 890 and 1142).

MISCONDUCT (See also **MISCONDUCT**)—CUBs 751, 890, 891 (890), 1446, 1533.

PARTICIPATING (See also **Picketing** and **Sympathetic**)—CUBs 287 (190), 322, 540, 622, 641, 761, 918, 981, 1019 (918, 981), 1035 (540), 1109 (1019), 1142, 1201, 1309, 1419, 1521A (981), 1522A, 1532, 1584, 1591 (622 and 761), 1606, 1609.

PARTIES TO THE DISPUTE—CUBs 85, 570, 641, 918, 1385, 1386.

PICKETING—CUBs 85, 156 (85), 190, 287 (190), 423, 641, 875, 918, 981, 1019 (918, 981), 1109 (1019), 1136, 1142, 1151 (570), 1201, 1386, 1514, 1532 (457, 1109, 1201, 1386), 1584, 1591 (662), 1606, 1609.

PREMISES (Sec. 63(3))—CUBs 190, 531, 540, 570, 641, 1109, 1142, 1201, 1522A, 1532, (1035, 1142, 1201, 1386).

PROOF—CUBs 85, 528, 622, 761, 1136, 1148, 1151 (570), 1201, 1446 (751), 1447-8, 1475, 1514, 1521A (156, 423, 528, 540, 622, 1121, 1142, 1147, 1309, 1386 and 1514), 1522A, 1532, 1584, 1591, 1602, 1606.

RELIEF—CUBs 287 (190), 531, 761, 1151 (570), 1514, 1521A (85), 1522A, 1584, 1606, 1609.

REPRISALS AGAINST CLAIMANTS' FAMILIES, ETC.—CUB 918.

SEPARATE PREMISES—See **Premises**.

SEPARATION PRIOR TO STOPPAGE—CUBs 716 (417), 863, 868 (716), 870 (716, 863, 868), 1035 (540), 1147, 1227.

SHORTAGE OF WORK—CUBs 322, 540, 570, 622, 716 (417), 863, 868 (716), 870 (716, 863, 868), 1151 (570), 1201, 1271, 1447-8, 1521A, 1522A, 1591, 1606.

STOPPAGE OF WORK (Subsection (1)—See also **Termination**)—CUBs 156 (85), 540, 570, 641, 751, 760, 827, 890, 891 (890), 1136, 1142, 1147, 1201, 1271, 1446, 1447-8, 1514, 1530, 1533 (570, 827, 870, 890 and 1142), 1542 (751, 1147, 1151).

SUBSTANTIAL RESUMPTION OF WORK, (See **Termination**—End of stoppage).

SUITABLE EMPLOYMENT REFUSED (Sec. 61).By employee involved in dispute—CUB 1530.By new employee.**SYMPATHETIC STRIKE OR LOCKOUT**—CUBs 156 (85), 190, 287 (190), 570, 641, 761, 981, 1019 (918, 981), 1035 (540), 1109 (1019), 1201, 1386, 1419, 1522A, 1532 (1035, 1386).**TERMINATION (OF DISQUALIFICATION)**Bona fide employed elsewhere—CUBs 478, 531, 1148, 1589 (1184).Regularly engaged in another occupation—CUBs 478, 531, 1148, 1589.End of stoppage—CUBs 531, 751, 827, 1147, 1514 (570), 1533.Other—CUBs 1121 (152), 1151 (570), 1450.**UNION**Existence—CUBs 751, 890, 1419, 1446 (751 and 1136), 1447-8 (751 and 1136), 1530, 1533.Membership (See also **Grade or Class**), CUBs 85, 127, 156 (85), 190, 287 (190), 322, 423 (85, 127, 191, 322), 528, 531, 540, 570, 622, 641, 716 (417), 761, 918, 981, 1019 (918, 981), 1035 (540), 1109, 1121 (152), 1142, 1151 (570), 1201, 1271, 1309, 1385 (531), 1386, 1419, 1450, 1459-60-61 (1450), 1514 (85), 1530, 1584, 1606, 1609.Procedure—CUBs 1450, 1609.Rights of individual (Section 61)—CUBs 85, 127, 156 (85), 190, 287 (190), 644, 762 (644).**VIOLENCE**—CUBs 287 (190), 918, 981, 1019 (918, 981), 1109 (1019), 1151 (570), 1386, 1532 (1386).**VOLUNTARY LEAVING**—CUBs 190, 287 (190), 1109, 1151 (570), 1201, 1532 (Viz.), 1542, 1584.**WORKING CONDITIONS**—(See also **Conditions of Employment**)—CUBs 322, 761, 1385 (531), 1447-8, 1514 (85), 1533.**VIA. MARRIED WOMEN'S REGULATIONS** (Sections 67(1) (c) (iv) of the Act and 161 of the Regulations, 1955)*Legislative Index: Digested jurisprudence cited since the inception of the Act, classified in relation to the legislative provisions cited therein.***1950** *Section 5A of the Benefit Regulations* (Introduced for the first time)
CUBs 655, 725.**1951** *Section 5A of the Benefit Regulation* (Amended effective July 1st, 1951 and amended as Section 137, 1954)
CUBs 772, 773, 775, 779, 792, 796, 820, 823, 832, 845, 848, 859, 884, 908, 1015, 1045, 1050, 1101, 1127, 1163.**1954** *Section 137 of the Regulations* (Amended Section 5A of the Benefit Regulations, 1951 and redrafted as Section 161, 1955)
CUBs 1185, 1215, 1221.**1955** *Section 161 of the Regulations* (Redrafted and amended Section 137, 1954)
CUBs 1215, 1221, 1363 and all decisions thereunder rendered since January 1, 1958: CUBs 1456, 1457, 1465 (1221), 1497, 1508, 1516 (1103), 1523, 1558 (1093, 1094, 1183).**1957** *Revoked by P.C. 1957-1477, effective November 17, 1957.*

VII. MISCONDUCT (Section 60 of the Act, 1955)

A—Legislative Index: Digested jurisprudence cited since the inception of the Act, classified in relation to the legislative provisions cited therein.

1940 *Section 43(c) of the Act* (Redrafted as Section 41(1), 1946)
CUB 159.

1946 *Section 41(1) of the Act* (Redrafted Section 43(c) of the Act and renumbered as Section 43(1), 1953)
CUBs 480, 569, 584, 611, 710, 890, 916, 929, 1044.

1953 *Section 43(1) of the Act* (Renumbered Section 41(1), 1946 and revised as Section 60(1), 1955)
CUB 1100.

1955 *Section 60(1) of the Act* (Revised Section 43(1) of the Act, 1953)
All decisions thereunder rendered since January 1, 1958:
CUBs 1446, 1464, 1482, 1544, 1569.

B—Subject Index: Digested jurisprudence cited since the inception of the Act, classified in relation to subject subheadings.

ABSENCE—CUBs 611, 710, 890, 1221.

DISQUALIFICATION DURATION—CUB 1569.

EXTENUATING CIRCUMSTANCES (See also **Disqualification**)—CUB 1100.

INEFFICIENCY—CUB 848.

INSUBORDINATION—CUBs 159, 584, 710, 848, 890, 891 (890), 929, 1100, 1464 (159), 1544, 1569.

INTOXICANTS

LABOUR DISPUTE, MISCONDUCT IN CONNECTION WITH—CUBs 890, 891 (890), 1446 (891).

OFFENCES

Criminal—CUBs 480 (138q.), 569, 916, 1482.

Industrial—CUBs 569, 584, 1044 (569), 1464 (159), 1569.

PROOF—CUBs 848, 1464, 1482, 1569.

RELATIONS WITH OTHERS

Fellow workers—CUB 1482.

Public—

Supervisors—CUBs 159, 480 (138q.), 584, 848, 890, 916, 929, 1464, 1482, 1544, 1569.

Union—

RULES NOT FOLLOWED—CUBs 584, 710, 890, 891 (890), 929, 1044 (569), 1100, 1569

THEFT (See **Offences**, Criminal).

UNION ACTIVITIES (Sec. 60(2))—CUBs 584, 890, 891 (890), 1044, 1446 (891), 1569.

VOLUNTARY LEAVING ALTERNATIVELY (See **VOLUNTARY LEAVING**—Misconduct alternatively and Tantamount to Voluntary Leaving)—CUBs 159, 848, 1544.

VIIA. PUNITIVE DISQUALIFICATION (Sections 45(3) of the Act and 145(3) of the Regulations, 1955)

Legislative Index: Digested jurisprudence cited since the inception of the Act, classified in relation to the legislative provisions cited therein.

1953 *Section 46(2) and (3) of the Act* (Renumbered Section 44(2) and (3), 1952 and amended and redrafted as Sections 65 of the Act and 145(3) of the Regulations) CUB 1146.

1955 *Section 65 of the Act and Section 145(3) of the Regulations* (Amended and redrafted Section 46(2), 1953)
CUBs 1376, 1439 and all decisions thereunder rendered since January 1, 1958: CUBs 1453, 1463, 1481 (1376), 1492 (1481), 1501, 1511, 1515 (1481), 1525A, 1531, 1535, 1553, 1560, 1565, 1567, 1592.

VIIB. QUALIFICATION (Section 45 of the Act, 1955)

Legislative Index: Digested jurisprudence cited since the inception of the Act, classified in relation to the legislative provision cited therein.

1940 *Section 29(2) of the Act*
CUB 196.

1950 *Section 28(1) and (3) of the Act*
CUB 875.

1955 *Section 45 of the Act*
CUB 1336 and all the decisions thereunder rendered since January 1, 1958: CUBs 1451, 1494.

VIII. SUITABLE EMPLOYMENT (Sections 54(2)(b) and 59 of the Act, 1955)

A—Legislative Index: Digested jurisprudence cited since the inception of the Act, classified in relation to the legislative provisions cited therein.

1940 *Section 43(b) of the Act* (Redrafted as Section 40 of the Act, 1946)
CUBs 89, 103, 202.

1946 *Section 40 of the Act* (Redrafted Sections 31(b) and 43(b) of the Act, 1940 and renumbered as Section 42, 1953)
CUBs 431, 437, 444, 459, 477, 488, 494, 495, 507, 510, 520, 568, 572, 619, 639, 644, 708, 717, 723, 782, 887, 935, 961.

1951 *Section 5(2)(f) of the Benefit Regulations*
CUB 717.

1953 *Section 42 of the Act* (Renumbered Section 40, 1946 and revised as Section 59, 1955)
CUBs 1113, 1152A, 1184, 1251.

1955 *Section 59 of the Act* (Revised Section 42, 1953)
CUBs 1272, 1286, 1287, 1289, 1290, 1331A, 1350, 1409, 1413, 1438 and all decisions thereunder rendered since January 1, 1958: CUBs 1468, 1477, 1480, 1485, 1497, 1506, 1512, 1529, 1530, 1532, 1540, 1545, 1559A, 1576, 1579, 1582, 1583, 1587, 1594, 1597.

B—Subject Index: Digested jurisprudence cited since the inception of the Act, classified in relation to subject subheadings.

AVAILABILITY

General—CUBs 717 (384).

Disqualification only for refusal—CUBs 202, 431 (33, 314), 437, 459, 619, 708, 723, 887, 935 (572), 961, 1152A, 1251, 1350, 1413, 1438, 1480, 1497, 1512, 1576, 1582, 1594.

Joint disqualification—CUBs 477 (302, 394, 407), 568, 782 (476, 486), 1184, 1272, 1290, 1409, 1468, 1485, 1506, 1529, 1540, 1545, 1559, 1579, 1583, 1587, 1597.

Disqualified instead as Not available—CUBs 217 (171x), 510, 1477, 1480, 1481, 1489, 1492, 1529.

Unable to find Suitable employment, see **Unable**.

CAPABILITY RESTRICTED, see **Suitability**.

CHANGE FROM USUAL EMPLOYMENT AS REGARDS.

Area—CUBs 217 (171x), 437, 488, 494, 495, 510, 568, 572, 935 (572), 961, 1409, 1413, 1485, 1511, 1529, 1559, 1594.

Conditions (See **Conditions**)—CUBs 1413, 1530, 1532, 1540, 1576.

Occupation (See also **Conditions**)—CUBs 103, 431 (33, 314), 444, 477, 488, 507, 510, 961, 1350, 1480, 1559, 1576, 1579 (1350), 1583 (1350), 1597.

Wage Rate (See also **Conditions**)—CUBs 89, 431 (33, 314), 457, 488, 494, 495, 644, 961, 1251, 1286, 1350, 1413, 1485, 1497, 1545, 1576, 1579, 1582, 1583.

CONDITIONS OF EMPLOYMENT (See also **Change**).

Advancement opportunity—

Casual work—

Contract of Service—CUB 1530.

Dangerous work—CUB 1532.

Eating facilities—CUB 1497.

Equipment—

Experience—CUBs 1350, 1576 (1350), 1579 (1350), 1583 (1350).

Fellow employees—

Health (See also under **Suitability**).

Hours and days of work—CUBs 619, 961, 1331A, 1512 (961), 1576.

Housing—CUB 961.

Irregular employment (short-time)—CUBs 1286, 1289, 1413.

Living conditions—CUBs 1287, 1289, 1485.

Overtime—CUB 1540.

Part-time—CUBs 459, 782 (476, 486), 1113, 1477 (594 and 1171), 1587 (782, 486 and 1290).

Piece-work—CUBs 1286, 1289, 1413, 1438, 1579, 1583.

Seasonal—CUBs 1286, 1287, 1289, 1413, 1438, 1506.

Shift work—CUBs 520, 579, 887, 961, 1468, 1512 (961), 1576.

Skilled work—CUBs 1350, 1576.

Temporary—CUBs 1413, 1438, 1477.

Transportation facilities (See also Change from usual area)—CUBs 217 (171x), 437, 619, 1152A, 1184, 1286, 1287, 1289, 1413, 1438, 1468, 1485, 1497, 1512 (961), 1559, 1594.

Travel distance (See also Change from usual area)—CUBs 217 (171x), 510, 935, 1409, 1413, 1438, 1540.

Trial employment offered (See **Trial**).

Wages (See also Change from usual area)—CUBs 459, 1152A, 1286, 1289, 1331A, 1485, 1497, 1506, 1579 (1350), 1583 (1350).

Working conditions other than above—CUB 1286.

DISQUALIFICATION DURATION (See also **Availability** and **Voluntary Leaving** herein)—CUBs 488, 495, 507, 639, 1113, 1413, 1594.

DISTANCE TO WORK, see **Conditions**—Transportation and Travel.

DOMESTIC CIRCUMSTANCES (See also **Personal Circumstances** and **Suitability**)—CUBs 103, 217 (171x), 437, 459, 494, 495, 510, 520, 568, 572, 782 (476, 486), 887, 935 (572), 961, 1113 (271, 349, 418, 437, 459, 520 and 619), 1184 (1103), 1272, 1290, 1350, 1409, 1413, 1438, 1489, 1540, 1559, 1576 (935, 887, 961 and 1113).

DURATION OF UNEMPLOYMENT (See also **Reasonable Interval**).

Brief—CUBs 444, 494, 495, 507, 1409, 1506, 1587 (782, 486, 1290).

Long—CUBs 89, 217 (171x), 431 (33, 314), 437, 444, 459, 477 (302, 394, 407), 488, 510, 520, 568, 572, 619, 723, 782 (476, 486), 887, 935 (572), 961, 1152A, 1184, 1272, 1286, 1289, 1290, 1331A, 1468, 1497, 1512 (1184), 1540, 1559, 1575 (1152A, 1468, 1113), 1576 (887, 961, 1113), 1579, 1583, 1594, 1597.

EMPLOYMENT MARKET—(**Local or General**) (See also **Prospects**)—CUBs 887, 1409, 1413, 1468, 1512 (961), 1594.

EXTENUATING CIRCUMSTANCES, see **Disqualification Duration**.

FAILURE TO APPLY (Sec. 59)—CUBs 103, 444, 1113, 1350, 1529.

GOOD CAUSE—SHOWN—CUBs 89, 494, 495, 644, 717 (384), 1477, 1529, 1530, 1540, 1545, 1587 (782 and 486).

—**NOT SHOWN**—CUBs 202, 217 (171x), 431 (33, 314), 437, 444, 459, 477 (302, 394, 407), 488, 507, 520, 568, 572, 619, 708, 723, 782 (476, 486), 887, 935 (572), 961, 1152A, 1184, 1251, 1272, 1286, 1287, 1289, 1350, 1468, 1480, 1485, 1489, 1497, 1506, 1512 (1184 and 961), 1575 (935, 887, 961 and 1113), 1576 (935 and 1350), 1579 (1350), 1582, 1583, 1594, 1597.

LABOUR DISPUTE INVOLVED—CUB 1532.

MARRIED WOMEN—CUBs 431 (33, 314), 437, 459, 568, 572, 961.

NEGLECT TO APPLY (Sec. 59) (See **Failure**).

OCCUPATION, see **Chance from Usual**.

OFFER OF EMPLOYMENT—CUBs 488, 1511.

PERSONAL CIRCUMSTANCES (See also **Domestic Circumstances Studies** and **Suitability**)—CUBs 202, 619, 717 (384), 935 (572), 1113 (271, 349, 418, 437, 459, 520 and 619), 1477, 1506.

PREVAILING CONDITIONS—CUBs 89, 444, 457, 488, 494, 495, 619, 887, 935 (572), 961, 1152A, 1184, 1286, 1287, 1331A, 1350, 1575, 1576, 1579, 1582, 1583.

PREVIOUS OFFER NOT ACCEPTED EITHER—CUBs 444, 1468, 1480.

PROOF—CUBs 89, 494, 1331A, 1511, 1529, 1540, 1582, 1597.

PROSPECTS OF OTHER WORK OR OF RETURN TO FORMER—CUBs 202, 217 (171x), 437, 459, 477 (302, 394, 407), 494, 495, 507, 510, 520, 572, 708, 723, 782 (476, 486), 887, 935 (572), 1113, 1272, 1350, 1413, 1438, 1468, 1506, 1511, 1512, 1540, 1545, 1559, 1582, 1587 (782 and 486).

REASONABLE INTERVAL—CUBs 89, 431 (33, 314), 437, 444, 459, 477 (302, 394, 407), 494, 495, 510, 520, 708, 723, 1152A, 1350, 1409, 1413, 1575 (1113, 1152A, 1468), 1576 (1152A, 1468), 1579, 1583.

REFUSAL (Sec. 59)—CUBs 1530, 1532.

STUDIES (See also *AVAILABILITY—Students*)—CUB 1511.

SUITABILITY OF OFFER (Subjective and peculiar to claimant).

Age—CUB 1594.

Capability—CUBs 103, 1290, 1597.

Disability, physical or mental—CUBs 1290, 1438.

Health—CUBs 103, 1497, 1506, 1545.

Pregnancy—CUBs 1497, 1522, 1582.

TRANSPORTATION, see **Conditions**.

TRAVEL, see **Conditions**.

TRIAL PERIOD—CUBs 961, 1287, 1579 (1350), 1582, 1583, 1594, 1597.

UNABLE TO OBTAIN (Sec. 54(2)(b))—CUB 1511.

UNEMPLOYMENT, see **Duration**.

UNION

Relations (Sec. 61)—CUBs 1530, 1532.

Rules—CUBs 644, 1530, 1532.

VOLUNTARILY LEFT LAST PREVIOUS EMPLOYMENT

Subjective Reasons—CUBs 217 (171x), 431 (33, 314), 459, 477, 488, 572, 935 (572), 961, 1113, 1152A, 1184, 1350, 1468, 1477, 1480, 1489, 1497, 1529, 1576, 1579, 1587, 1597.

Employment had been felt unsuitable—CUBs 444, 1290, 1497, 1582.

Delayed claim for benefit for 6 weeks—CUBs 572, 1468, 1480.

Disqualification imposed for Voluntarily Leaving—CUBs 477, 507, 1251, 1587.

For same reasons as present refusal—CUBs 217 (171x), 431 (33, 314), 459, 477, 572, 1251, 1290, 1468, 1582.

WORKING CONDITIONS, see **Conditions**.

VIIIA. SUSPENSION OF BENEFIT PENDING APPEAL

(Sections 80 of the Act and 167 of the Regulations, 1955)

Legislative Index: Digested jurisprudence cited since the inception of the Act, classified in relation to the legislative provisions cited therein.

1953 *Section 67 of the Act* (Renumbered Section 65, 1946 which was substantially the same as Section 65, 1940)
CUB 1049.

1955 *Sections 80 of the Act and 167 of the Regulations*
CUB 1452.

IX. UNEMPLOYED (Sections 54(1) & 57 of the Act and Sections 156 & 158 of the Regulations, 1955)

A—Legislative Index: Digested jurisprudence cited since the inception of the Act, classified in relation to the legislative provisions cited therein.

1946 *Section 27(1)(a) of the Act* (Redrafted Section 28(ii) of the Act, 1940 and renumbered as Section 29(1)(a), 1953)
CUBs 246, 262, 338, 447, 453, 461, 468, 469, 470, 483, 514, 549, 590, 598, 639, 647, 745, 758, 793, 807, 888, 894, 915, 917, 929.

Section 29(1)(a) of the Act (Redrafted Section 33(a), 1940 and redrafted as Section 29(1)(f), 1952)
CUBs 246, 807, 915.

Sections 29(1)(b) of the Act (Redrafted Section 33(b), 1940 and redrafted as Section 29(2)(a), 1952)
CUBs 514, 705, 807.

Section 29(1)(c) of the Act (Redrafted Section 33(c), 1940 and redrafted as Section 29(1)(c), 1952)
CUBs 447, 549.

Section 41(1) of the Act (See under Voluntary Leaving)
CUB 929.

1949 *Section 5(2)(e) of the Benefit Regulations* (Redrafted Sections 5(2)(d) of the Benefit Regulations, 1948 and added to in Section 5(2)(e), 1951)
CUB 647.

Section 5(3) of the Benefit Regulations (Introduced in 1949 and slightly redrafted as Section 135, pre-1955)
CUBs 745, 894.

1952 *Section 29(1)(f) of the Act* (Redrafted Section 29(1)(a), 1946 and renumbered as Section 31(1)(f), 1953)
CUB 917.

Section 5(2)(e) and (f) of the Regulations (Redrafted Section 5(2)(e) (f), 1951 and redrafted as Section 5(2)(e) and (f), 1953)
CUB 917.

1953 *Section 29(1)(a) of the Act* (Renumbered Section 27(1)(a), 1946 and redrafted as Sections 54(1) and 57(1), 1955)
CUBs 1026, 1032, 1052, 1129, 1146, 1191, 1212, 1444.

Section 31(1)(c) and (e) of the Act (Renumbered Section 29(1)(c) and (e), 1952 and redrafted as Section 57(2)(b) and (c), 1955)
CUB 1049.

Section 31(1)(f) of the Act (Renumbered Section 29(1)(f), 1952 and redrafted as part of Sections 172 and 173 of Regulations, 1955)
CUB 1026.

Section 31(2) of the Act (Renumbered Section 29(2)(a), 1952 and absorbed in Sections 54(1), 56, 57, 1955)
CUB 1212.

Section 5(2)(e) of the Benefit Regulations (Redrafted Section 5(2)(e), 1952 and redrafted as Section 133, pre-1955)
CUB 1026.

1955 *Sections 54(1) and 57(1) of the Act* (Redrafted Sections 29(1)(a) and, in part, 31, 1953 and introduced the new concept of the "full working week")
CUBs 1313, 1324, 1392, 1403, 1404, 1439, 1442, 1443 and all decisions thereunder rendered since January 1, 1958: CUBs 1444, 1445, 1455, 1458, 1463, 1467A, 1479, 1486, 1488, 1500, 1501, 1515, 1524, 1525A, 1527, 1534, 1537, 1543A, 1550, 1551, 1561, 1564, 1565, 1566, 1568, 1571, 1581, 1588, 1590, 1592, 1595, 1600, 1601, 1604, 1605.

Section 57(1) of the Act: See Section 54(1)

Section 57(2)(b) of the Act

(All decisions thereunder rendered since January 1, 1958):

CUBs 1604, 1605.

Section 57(3) of the Act

1. Students: (See **Availability for work**)

All decisions thereunder rendered since January 1, 1958:

CUBs 1496, 1541 and 1563.

2. Farmers: See Section 156 of the Regulations.

Section 155 of the Regulations: See Section 57(2)(b) of the Act (Redrafted Section 152, pre-1955, in light of "full working week" concept)

Section 156 of the Regulations (Redrafted slightly Section 135, pre-1955)

CUBs 1455, 1463, 1500, 1503, 1527, 1534, 1550, 1551, 1565, 1568.

Section 158 of the Regulations: See Section 54(1) of the Act (Introduced as part of new concept: the full working week)

B—*Subject Index: Digested jurisprudence cited since the inception of the Act, classified in relation to subject subheadings.*

APPRENTICESHIP—CUB 1467A (1231).

AVAILABILITY FOR FULL TIME WORK DESPITE EMPLOYMENT (Reg. 158(4))—CUBs 262 (245q.), 461 (264, 363), 468, 470 (245, 264, 363), 514, 590 (469), 705, 745, 758, 793, 915 (514), 1032, 1052, 1129 (888), 1146 (758, 793), 1324, 1392, 1439, 1455, 1463, 1467A, 1476A, 1479, 1488, 1500, 1501, 1503, 1515, 1524, 1527, 1534, 1537, 1543, 1550, 1551, 1560, 1565, 1566 (1439, 1543), 1568, 1571 (1566, 265, 705), 1600, 1601, 1604, 1605.

CONTRACT OF SERVICE (See also **Apprenticeship** and **Employed**)—CUBs 246, 447 (62), 453, 483, 514, 705, 929, 1049, 1129 (888), 1146, 1313, 1324, 1443, 1445, 1458 (1443, 246), 1488, 1543, 1561 (1443), 1564 (1443, 1445), 1581 (1443), 1590 (1443, 1458, 1461, 1464 and 1581), 1604, 1605.

COURSE OF INSTRUCTION (Sec. 57(3)) (See also **AVAILABILITY**).

DISQUALIFICATION (See also **Retroactive**)—CUBs 639, 1445, 1565.

EARNINGS (See **EARNINGS** and **Usual Remuneration**)—CUBs 246, 262 (245q.), 338, 1032, 1052, 1439, 1486 (1404), 1543, 1545 (1543), 1566 (1032, 1052), 1588, 1592, 1595, 1604, 1605.

EMPLOYED—CUBs 447 (62), 1486 (1404), 1488, 1515 (1486), 1534, 1543.

ENGAGED ON OWN ACCOUNT (Reg. 158(3))—CUBs 262 (245q.), 453, 461 (264, 363), 468, 469, 470 (245, 264 and 363), 590 (469), 705, 745, 894 (745), 1032, 1052, 1324, 1392, 1404, 1439 1455 1463, 1467A, 1479, 1488, 1500, 1501, 1503, 1524, 1525A, 1527, 1534 1537, 1543, 1550, 1551, 1565, 1566 (1543, 1032, 1052), 1568, 1571 (1566, 265 and 705), 1588, 1595, 1600.

FAMILY ENTERPRISE—CUBs 483, 514, 758, 793, 915 (514), 1032, 1146, 1191, 1212, 1404, 1439, 1444, 1463, 1467A, 1479, 1486 (1404), 1515 (1486), 1525A, 1527, 1543, 1550, 1551, 1560, 1566 (1439), 1568, 1595.

FARMERS—CUBs 447 745, 894 (745), 1455, 1463, 1500, 1501, 1503, 1525A, 1527, 1534, 1550, 1551, 1560, 1565, 1568, 1600.

FISHERMEN—CUB 1392.

FULL TIME WORK, see also **Availability** above—CUBs 461 (264, 363), 793, 1404.

FULL WORKING WEEK

Hours, shifts, etc. (Reg. 158(1))—CUBs 915 (514), 1049, 1212, 1403, 1442 (1403), 1486 (1403 and 1212), 1515, 1592, 1595, 1604, 1605.

Part-time—CUBs 1403, 1439, 1442 (1403), 1476, 1515, 1524, 1595.

Usual remuneration (Reg. 158(2)) See **Usual Remuneration and Earnings**.

HOLIDAYS (Sec. 57(2)(b) and Reg. 159).

General continuous—CUBs 447 (62), 549 (199, 310), 647, 1604, 1605.

Single holiday—CUB 1049.

Day before and/or after holiday.

LEAVE OF ABSENCE

Compensatory (overtime)—CUBs 246, 1443, 1458 (1443, 246), 1561 (1443, 1445), 1564 (1443, 1445), 1581 (1443), 1590 (1443, 1458, 1461, 1464 and 1581).

Retirement—See **Retirement**.

Seasonal (See also **AVAILABILITY**, **Restricted** duration and seasons)—CUBs 246, 1527, 1561 (1443, 1445), 1564 (1443, 1445), 1581 (1443), 1604, 1605.

Other—CUB 1129 (888).

OFF-SEASON UNEMPLOYMENT (See also **Farmers** and **Leave Seasonal**)—CUBs 246, 453, 461 (264, 363), 468, 469, 470 (245, 264 and 363), 483, 590 (469), 745, 888 (CUC 30), 894 (745), 1392, 1455, 1503, 1534, 1550, 1551, 1561 (1443, 1445), 1564 (1443, 1445), 1565, 1568, 1571, 1581 (1443).

PROOF—CUBs 469, 483, 894 (745), 1032, 1052, 1191, 1392, 1439, 1444, 1463, 1467A, 1486 (1403), 1488, 1500, 1501, 1515, 1524, 1525A, 1534, 1537, 1543, 1550, 1551, 1565, 1566 (1032, 1052, 1392, 1537, 1543), 1568, 1571, 1588, 1592, 1595, 1600, 1601, 1604, 1605.

RELIEF OF NEEDY (Reg. 157).

RETIRED, see **Separated**.

RETIREMENT LEAVE—CUBs 917, 1313, 1451.

RETROACTIVE DISQUALIFICATION—CUBs 1479, 1501, 1515, 1566, 1568.

SEASON, see **Leave** and **Off-Season**.

SELF-EMPLOYED, see **Engaged on Own Account**.

SEPARATED OR RETIRED FROM REGULAR EMPLOYMENT—CUBs 338, 447 (62), 461 (264, 363), 470 (245, 264, 363), 514, 647, 705, 758, 793, 915 (514), 1032, 1392, 1439.

SUBSIDIARY (See also *Availability* above)—CUBs 447, 461 (264, 363), 468, 514, 705, 745, 793, 894 (745), 1032, 1052, 1212, 1442, 1479, 1524, 1537, 1566 (1439), 1571 (1566), 1592.

SUITABLE EMPLOYMENT REFUSED—CUBs 1479, 1515.

SUNDAY (Sec. 57(2)(a) and Reg. 154).

UNEMPLOYABLE, see *CAPABLE OF WORK*.

USUAL REMUNERATION (See also *Full Working Week* and *Earnings*)—CUBs 246, 338, 453, 483, 514, 549 (199, 310), 598 (258, 420), 745, 758, 793, 807 (137), 888 (CUC 30), 915 (514), 917, 929, 1146 (758, 793), 1191, 1212, 1404, 1443, 1445 (1443), 1458 (246, 1443), 1467 (1231), 1561 (1443, 1445), 1564 (1443, 1445), 1581 (1443), 1590 (1443, 1458, 1461, 1464, 1581), 1604, 1605.

VOLUNTARILY LEFT PREVIOUS (See also *VOLUNTARY LEAVING, Change*)—CUBs 262 (245q.), 461 (264, 363), 470 (245, 264, 363), 793, 1129 (888), 1191, 1404, 1455, 1486, 1488, 1500, 1515, 1527, 1534, 1537 (677), 1560, 1588, 1600.

X. VOLUNTARY LEAVING (Section 60(1) of the Act, 1955)

A—Legislative Index: Digested jurisprudence cited since the inception of the Act, classified in relation to the legislative provisions cited therein.

1940 *Section 43(c) of the Act* (Redrafted as Section 41(1), 1946)
CUBs 74, 124, 146, 193.

1946 *Section 41(1) of the Act* (Redrafted Section 43(c), 1940 and renumbered as Section 43(1), 1953)
CUBs 201, 231, 237, 259, 263, 341, 422, 429, 430, 436, 457, 474, 490, 498, 516, 522, 562, 566, 579, 583, 605, 610, 611, 612, 620, 621, 634, 639, 649, 696, 698, 724, 727, 748, 755, 765, 772, 773, 779, 785, 796, 816, 820, 832, 845, 847, 884, 885, 945, 946, 964, 1001.

1953 *Section 43(1) of the Act* (Renumbered Section 41(1), 1946 and revised as Section 60(1), 1955)
CUBs 1026, 1029, 1030, 1044, 1045, 1086, 1090, 1100, 1102, 1103, 1111, 1138, 1150, 1154, 1185, 1187, 1188, 1201, 1251.

1955 *Section 60(1) of the Act* (Revised Section 43(1), 1953)
CUBs 1255, 1285, 1307, 1308, 1329 and all decisions thereunder rendered since January 1, 1958:
CUBs 1452, 1457, 1464, 1466, 1470, 1471, 1474, 1490, 1496, 1498, 1500, 1504, 1507A, 1508, 1523, 1528, 1532, 1542, 1544, 1552, 1572, 1574, 1575, 1577, 1587, 1596, 1599, 1603.

B—Subject Index: Digested jurisprudence cited since the inception of the Act, classified in relation to subject subheadings.

APPLICATION FOR BENEFIT DEFERRED SIX WEEKS AFTER SEPARATION,
see *AVAILABILITY* and *SUITABLE EMPLOYMENT*.

AVAILABILITY

Questionable (See also *Application for Benefit Deferred*)—CUBs 430, 474, 634, 1026, 1185, 1251, 1255, 1452, 1456, 1490, 1508, 1577.

Disqualification as N.A. only—CUBs 259 (55), 620 (530), 621 (620), 748, 930 (530, 640), 1111 (530, 620), 1154 (765, 1138), 1329, 1499 (930), 1502.

Joint disqualification—CUBs 610 (430), 727, 1102 (748), 1103, 1138, 1307, 1329, 1496, 1552 (885, 1001, 1030, 1084, 1100), 1577, 1599.

CAPABILITY FOR WORK, CAUSE FOR VOLUNTARY LEAVING

Likely or reported cause—CUBs 696, 1150, 1456, 1464, 1599.

Pregnancy—CUBs 620 (530), 621 (620), 779, 820, 832, 845 (773, 779, 820), 930 (530, 640), 945, 1111 (530, 620), 1163, 1185 (779q.), 1329, 1465 (1221), 1499 (930), 1502.

Sickness benefit—CUB 1599.

CHANGE AS CAUSE OF VOLUNTARY LEAVING, IN

Occupation—CUBs 159, 579, 696, 755, 1138, 1154 (765, 1138), 1255, 1486, 1474, 1496, 1507A, 1544.

Income—CUBs 457, 490, 1026, 1030, 1285, 1500, 1603.

Residence—CUBs 259 (55), 430 (337), 474, 566, 610 (430), 611, 612 (45), 634, 724, 772 (612), 773, 885, 1045 (772), 1086, 1103, 1457, 1474, 1486, 1507A, 1508, 1552 (885, 1001, 1030, 1084, 1100), 1575, 1577.

DEFINITION AND EXAMPLES—CUBs 1498 (639), 1532 (Viz.), 1572.

DISTANCE FROM WORK, see **Transportation and Travel**.

DOMESTIC CIRCUMSTANCES (See also **Married Women and Personal**).

Marriage—CUBs 612 (45), 1045, 1050, 1363, 1456, 1457, 1508.

Temporary—CUBs 430 (337), 474, 566, 610 (430), 611, 1102 (748), 1504, 1577.

Continuing—CUBs 124, 259 (55), 583, 727, 748, 1030, 1086, 1102 (748), 1471, 1575.

DISQUALIFICATION PERIOD (See also **Duration** and **Retroactive**)—CUBs 1498 (639).

DURATION OF DISQUALIFICATION (See also **Extenuating Circumstances**)—CUBs 474, 516, 522, 562, 566, 583, 605 (341), 634, 639, 755, 785, 816, 847, 946, 964, 1103, 1185, 1466, 1470, 1471, 1496, 1498 (639), 1500 (146), 1504, 1507A, 1532, 1572, 1575.

EXTENUATING CIRCUMSTANCES (See also **Duration**)—CUBs 474, 516, 522, 562, 566, 583, 605 (341), 634, 755, 785, 816, 847, 946, 964, 1030, 1188, 1466, 1470, 1471, 1504, 1507A, 1572, 1574, 1575, 1603 (1575).

GRIEVANCES (See also **Working Conditions**).

Raised with employer—CUBs 74, 146, 237, 457, 490, 498, 583, 605 (341), 639, 696, 946, 964, 1001, 1086, 1100, 1150, 1187, 1466, 1498 (639), 1500, 1523, 1532 (Viz.), 1544, 1572, 1596.

Raised with union—CUBs 785, 1090 (BU 4501 (1920) and 1673/25), 1100, 1150, 1523, 1532 (Viz.), 1544.

Not raised—CUBs 74, 124, 159, 201, 231, 259 (55), 263 (63), 436 (237), 649, 785, 816, 1029, 1188, 1490, 1523, 1574.

HASTE—CUBs 201, 237, 422, 429, 430 (337), 436 (237), 457, 490, 649, 964, 1100, 1470, 1496, 1532 (259, 422, 429, 498, 698, 816, 847, 885, 946, 1101, 1030, 1086, 1100 and 1255), 1544, 1575.

JUST CAUSE

Not shown—CUBs 74, 124, 146, 193, 201, 231, 237, 259 (55), 263 (63), 341 (216v), 422, 429, 430 (337), 436 (237), 457, 474, 498, 516, 522, 562, 566, 579, 583, 605 (341), 610 (430), 611, 634, 649, 698, 724, 727, 755, 779, 785, 796, 816, 820, 832, 845 (773, 779, 820), 847, 884 (823 and 859), 885, 946, 964, 1001, 1029, 1030, 1050, 1086, 1103, 1138, 1154 (765, 1138), 1187, 1188, 1255, 1285, 1307, 1457, 1466, 1470, 1471, 1490, 1496, 1498 (639), 1500, 1504, 1507A, 1523, 1532 (124, 201, 422, 429, 698, 727, 755, 964), 1544, 1552 (885, 1001, 1030, 1084 and 1100), 1572 (1187), 1575, 1599, 1603 (1575).

Shown—CUBs 159, 490, 612 (45), 621 (620), 696, 772 (612), 773, 779, 945, 1026, 1045 (772), 1090 (BU 4501 (1920)), 1102 (748), 1150, 1201, 1329, 1456, 1464 (159), 1508, 1523, 1577.

LABOUR DISPUTE INVOLVED—CUBs 1201, 1532, 1542.

MARRIED WOMEN LEAVING THE AREA (See also **Domestic** and **CLAIMS MATTERS**)—CUBs 259, 474, 612 (45), 772 (612), 773, 1045 (772), 1103, 1363, 1457.

MISCONDUCT ALTERNATIVELY—CUBs 159, 231, 611, 1464, 1504, 1544.

PERSONAL CIRCUMSTANCES (Other than **Domestic Circumstances, Availability** or **Capability** for which see above)—CUBs 74, 124, 146, 422, 634, 724, 772 (612), 773, 885, 1464, 1466, 1474, 1507A, 1552 (1084), 1572 (1187).

PREGNANCY, see under **Capability**.

PROOF

General—CUBs 1523, 1532.

Onus on administration—CUBs 1464, 1574, 1596.

Onus on claimant—CUBs 74, 237, 259 (55), 429, 436 (237), 755, 1086, 1102 (748), 1150, 1255, 1307, 1466, 1490, 1574, 1532 (Viz.), 1552, 1575, 1599, 1603 (1575).

PROSPECTS OF OTHER EMPLOYMENT

General—CUBs 259 (55), 1030, 1185, 1457, 1500, 1552 (885, 1101, 1030, 1084, 1100), 1577.

Investigated beforehand—CUBs 422, 755, 1470, 1507A, 1572.

Not investigated beforehand—CUBs 237, 263 (63), 341 (216x), 429, 430 (337), 457, 490, 498, 562, 566, 583, 605 (341), 610 (430), 612 (45), 696, 698, 724, 727, 748, 755, 796, 816, 847, 885, 946, 964, 1001, 1086, 1100, 1103, 1188, 1285, 1363, 1490, 1498 (639), 1532 (259, 422, 429, 498, 698, 816, 847, 885, 946, 1101, 1030, 1086, 1100 and 1255), 1574, 1575, 1603 (1575).

RETIRED FROM FORMER EMPLOYMENT—CUBs 1138 1154 (765, 1138), 1163 (832), 1552.

RETROACTIVE DISQUALIFICATION—CUB 1452.

SICKNESS BENEFIT (Sec. 66) (See **Capability for Work** above and **CAPABLE**).

SUITABILITY OF EMPLOYMENT AS REASON (See also **Working Conditions** and **SUITABLE EMPLOYMENT—Voluntarily Left**)—CUBs 74, 124, 146, 159, 193, 201, 231, 237, 263 (63), 341 (216x), 422, 429, 436 (237), 457, 459, 490, 498, 516, 522, 579 698 1001 1111 (530 620), 1201, 1456, 1490, 1498 (639), 1500, 1523, 1572 (1187), 1574, 1603.

TANTAMOUNT TO VOLUNTARY LEAVING—CUBs 159, 611, 634, 639, 748, 1044 (569), 1100, 1150, 1255, 1464 (159), 1498 (639), 1523, 1532 (Viz.), 1544, 1577, 1599.

TRANSPORTATION AND TRAVEL AS CAUSE—CUBs 259 (55), 621 (620), 748, 946, 1045 (772), 1102 (748), 1457, 1464, 1575.

TRIAL PERIOD OF EMPLOYMENT BEFORE VOLUNTARY LEAVING (See also **Working Conditions**)—CUBs 490, 1490, 1575.

UNION RELATIONSHIPS AND RULES—CUBs 457, 964, 1044, 1090 (B.U. 4501 (1920) and 1673/25), 1201, 1532, 1575, 1603 (1575).

WORKING CONDITIONS (See also **Grievances, Suitability of Employment** and **Transportation**)—CUBs 124, 146, 201, 231, 237, 430 (337), 436 (237), 498, 516, 583, 605 (341), 639, 649, 696, 724, 785, 796, 816, 847, 946, 964, 1029, 1030, 1086, 1090 (B.U. 4501 (1920)), 1150, 1187, 1188, 1201, 1285, 1456, 1470, 1471, 1490, 1504, 1523, 1532 (74, 124, 146, 201, 231, 263, 436, 649, 785, 816, 964, 1029, 1086, 1090, 1100, 1150, 1188 and 1490), 1544, 1572 (1187), 1574, 1575, 1596.

THE UNEMPLOYMENT INSURANCE ACT (1940)

INTERPRETATION

2. (1) In this Act and in any regulation or order made thereunder, unless the context otherwise requires, Definitions.

- (d) "labour dispute", means any dispute between employers and employees, or between employees and employees, which is connected with the employment or non-employment, or the terms or conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises, or not; "Labour dispute".

1940 Section 2(1)(d)—Labour Dispute (Defined)—VI

THE UNEMPLOYMENT INSURANCE ACT (1940)

28. The receipt of insurance benefit by an insured person shall be subject to the following statutory conditions, namely,— Statutory conditions for receipt of benefit.

- (i) that contributions have been paid in respect of him while employed in insurable employment for not less than one hundred and eighty days during the two years immediately preceding the date on which a claim for benefit is made;
- (ii) that he has made application for insurance benefit in the prescribed manner, and proves that he was unemployed on each day on which he claims to have been unemployed;
- (iii) that he is capable of and available for work but unable to obtain suitable employment; and
- (iv) that he proves either that he duly attended, or that he had good cause for not attending, any course of instruction or training approved by the Commission which he may have been directed to attend by the Commission for the purpose of becoming or keeping fit for entry into or return to employment.

1940 Section 28—(ii) Unemployed —IX
(iii) Capable of and Available for work—III and II

THE UNEMPLOYMENT INSURANCE ACT (1940)

29. (2) If an insured person proves in the prescribed manner that he was, during any period falling within the two years specified in the first statutory condition, incapacitated for work by reason of some specific disease or bodily or mental disablement, or employed in any excepted employment, or engaged in business on his own account, the first statutory condition shall have effect as if for the said period of two years there were substituted a period of two years increased by such periods of incapacity or of such employment or business engagement but so as not to exceed in any case four years. Period of two years increased.

1940 Section 29(2)—Qualification (Claims Matters)—VIIIB

THE UNEMPLOYMENT INSURANCE ACT (1940)

Period of unemployment to begin on date of application. Proviso.

30. For the purposes of the second statutory condition, a period of unemployment shall be deemed to begin on the date on which the insured person makes application for benefit in the prescribed manner: Provided that regulations may be made authorizing some earlier date to be substituted for the date of application where good cause is shown for delay in making application.

1940 Section 30—Antedate (Claims Matters)—IIA

THE UNEMPLOYMENT INSURANCE ACT (1940)

Fulfilment of third statutory condition.

31. An insured person shall not be deemed to have failed to fulfil the third statutory condition by reason only that

Attending course of instruction.

(a) he is attending a course of instruction or training approved by the Commission in his case; or

Unemployment due to labour dispute.

(b) he has declined

Offer of less favourable employment.

(i) an offer of employment arising in consequence of a stoppage of work due to a labour dispute; or

(ii) an offer of employment in his usual occupation at wages lower, or on conditions less favourable, than those observed by agreement between employers and employees, or failing any such agreement, than those recognized by good employers; or

Offer of other than usual employment.

(iii) an offer of employment of a kind other than employment in his usual occupation at wages lower, or on conditions less favourable, than those which he might reasonably have expected to obtain, having regard to those which he habitually obtained in his usual occupation, or would have obtained had he continued to be so employed;

Proviso.

provided that after the lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be unsuitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.

1940 Section 31—(b) (i) Labour Dispute—VI

THE UNEMPLOYMENT INSURANCE ACT (1940)

Right to membership in organizations of workers preserved.

32. Notwithstanding anything contained in this Act no insured person shall be disqualified for receipt of benefit by reason only of his refusal to accept employment if by acceptance thereof he would lose the right—

(a) to become a member of, or

- (b) to continue to be a member and to observe the lawful rules of, or
- (c) to refrain from becoming a member of any association, organization or union of workers.

1940 Section 32—Labour Dispute—VI

THE UNEMPLOYMENT INSURANCE ACT (1940)

Disqualification for Benefit

43. An insured person shall be disqualified for receiving benefit—

- (a) if he has lost his employment by reason of a stoppage of work, which was due to a labour dispute at the factory, workshop or other premises at which he was employed, except where he has, during a stoppage of work, become bona fide employed elsewhere in the occupation which he usually follows, or has become regularly engaged in some other occupation, but this disqualification shall last only so long as the stoppage of work continues, and shall not apply in any case in which the insured person proves

Disqualification through loss of work due to labour dispute.

- (i) that he is not participating in, or financing or directly interested in the labour dispute which caused the stoppage of work, and
 - (ii) that he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage is taking place any of whom are participating in or financing or directly interested in the dispute, and where separate branches of work which are commonly carried on as separate businesses in separate premises are carried on in separate departments on the same premises, each of those departments shall, for the purposes of this provision, be deemed to be a separate factory or workshop or separate premises, as the case may be; or
- (b) if on a claim for benefit it is proved by an officer of the Commission that the claimant—
 - (i) after a situation in any employment which is suitable in his case has been notified to him by an employment office or other recognized agency, or by or on behalf of an employer as vacant or about to become vacant, has without good cause refused or failed to apply for such situation, or refused to accept such situation when offered to him, or
 - (ii) has neglected to avail himself of an opportunity of suitable employment, or

Disqualification through neglecting opportunity to work.

- (iii) has without good cause refused or failed to carry out any written direction given to him by an officer of the employment office with a view to assisting him to find suitable employment (being directions which were reasonable having regard both to the circumstances of the claimant and to the means of obtaining that employment usually adopted in the district in which the claimant resides); or

Disqualification through loss of work due to misconduct.

- (c) if he has been discharged from his employment by reason of his own misconduct or if he voluntarily leaves his employment without just cause; or

- 1940 Section 43—(a) Labour Dispute —VI
 (b) Suitable Employment—VIII
 (c) Misconduct —VII

THE UNEMPLOYMENT INSURANCE ACT (1940)

Authority to rescind or amend decision.

64. An insurance officer, a court of referees or the umpire, on new facts being brought to his or their knowledge, may rescind or amend a decision given in any particular claim for benefit.

- 1940 Section 64—Adjudication Proceedings—I

UNEMPLOYMENT INSURANCE REGULATIONS (1942)

Delay in making application.

7. In any case where good cause is shown for delay in making an application for benefit, the day on which the period of unemployment actually began shall be substituted for the date of the application pursuant to the provisions of section 30 of the Act.

- 1942 Section 7 of the Benefit Regulations—Antedate (Claims Matters)—IA

UNEMPLOYMENT INSURANCE REGULATIONS (1946)

Antedating.

13. Where a claimant considers that he has good cause for delay in making a claim for benefit and applies to have his claim made effective from a date earlier than the date of such application, an insurance officer may refuse such application, or approve it if the claimant proves

- (a) that on such date he had in all respects fulfilled the conditions for entitlement to benefit and was in a position to furnish proof thereof; and
 (b) that throughout the whole period between such earlier date and the date he made his claim he had good cause for delay in making such claim and furnishing such proof.

- 1946 Section 13 of the Benefit Regulations, 1946—Antedate (Claims Matters)—IA

THE UNEMPLOYMENT INSURANCE ACT (1946)

Insurance Benefit

27. (1) Every person who, being insured under this Act, proves that he is

Right of insured person to insurance benefit.

- (a) unemployed,
- (b) capable of and available for work; and
- (c) unable to obtain suitable employment,

and in whose case the conditions laid down by this Act are fulfilled, shall, subject to the provisions of this Act, be entitled to receive payments (in this Act referred to as "insurance benefit" or "benefit") at weekly or other prescribed intervals at such rates as are authorized by section thirty-one of this Act, so long as those conditions continue to be fulfilled and so long as he is not disqualified under this Act from the receipt of benefit.

1946 Section 27(1)—(a) Unemployed

—IX

(b) Capable of and Available for work—III and II

THE UNEMPLOYMENT INSURANCE ACT (1946)

29. (1) An insured person shall be deemed not to be unemployed

Periods not counted in computing unemployment: While in receipt of wages or compensation substantially equivalent to wages.

- (a) during any period for which notwithstanding that his employment has terminated, he continues to receive

- (i) remuneration, or
 - (ii) compensation for loss of, and substantially equivalent to, the remuneration he would have received if his employment had not terminated;

- (b) on any day on which, notwithstanding that his employment has terminated, he is following an occupation from which he derives remuneration or profit unless

- (i) that occupation could ordinarily be followed by him in addition to, and outside the ordinary working hours of his usual employment, and

While following any occupation for remuneration unless outside ordinary working hours.

- (ii) the remuneration or profit received therefrom for that day does not exceed one dollar and fifty cents or, where the remuneration or profit is payable or is earned in respect of a period longer than a day, the daily average of the remuneration or profit does not exceed that amount;

- (c) on any day that is recognized as a holiday for his grade, class or shift in the occupation or at the factory, workshop or other premises at which he is employed unless otherwise prescribed;

1946 Section 29—(1)(a) and (b) Unemployed and Earnings—IX and V
(1)(c) Unemployed (Holidays) —IX

THE UNEMPLOYMENT INSURANCE ACT (1946)

Rate for
persons
with
dependents.

31. (2) Where the employed person is a person with a dependent, that is to say

- (a) a man whose wife is being maintained wholly or mainly by him; or
- (b) a married woman who has a husband dependent on her; or
- (c) a person who maintains wholly or mainly one or more children under the age of sixteen years; or
- (d) a person who maintains a self-contained domestic establishment and supports therein a wholly dependent person connected by blood relationship, marriage or adoption;

the daily rate of benefit shall be forty times the average daily contribution paid by the insured person during the two years immediately preceding the initial claim for benefit in the benefit year.

1946 Section 31—(2) Dependency (Claims Matters)—IIIA

THE UNEMPLOYMENT INSURANCE ACT (1946)

Commence-
ment of
benefit
year and
period of
unemploy-
ment.

36. (6) Where an insured person shows good cause for delay in making a claim for benefit the Commission may authorize

- (i) the commencement of a benefit year on a day earlier than that specified in subsection one of this section, and
- (ii) in respect of a period of unemployment, a day of commencement earlier than the day he makes his claim for benefit.

1946 Section 36(6)—Antedate (Claims Matters)—IA

THE UNEMPLOYMENT INSURANCE ACT (1946)

Disqualification for Benefit

Disqualifica-
tion through
loss of work
due to
labour
dispute.

39. (1) An insured person shall be disqualified from receiving benefit if he has lost his employment by reason of a stoppage of work due to a labour dispute at the factory, workshop or other premises at which he was employed unless he has, during the stoppage of work, become bona fide employed elsewhere in the occupation which he usually follows, or has become regularly engaged in some other occupation; but this disqualification shall last only so long as the stoppage of work continues.

(2) An insured person shall not be disqualified under this section if he proves

- (a) that he is not participating in, or financing or directly interested in the labour dispute which caused the stoppage of work; and

- (b) that he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage is taking place any of whom are participating in, financing or directly interested in the dispute.

(3) Where separate branches of work which are commonly carried on as separate businesses in separate premises are carried on in separate departments on the same premises, each department shall, for the purpose of this section, be deemed to be a separate factory or workshop.

(Amended 1946, s.7.)

1946 Section 39—Labour Dispute—VI

THE UNEMPLOYMENT INSURANCE ACT (1946)

40. (1) An insured person shall be disqualified from receiving benefit if he,

Disqualification for neglecting opportunity to work or failure to attend course of instruction.

- (a) after an officer of the Commission or a recognized agency or an employer has notified him that a situation in suitable employment is vacant or about to become vacant, has without good cause refused or failed to apply for such situation or failed to accept such situation when offered to him;
- (b) has neglected to avail himself of an opportunity of suitable employment;
- (c) has without good cause failed to carry out any written direction given to him by an officer of the Commission with a view to assisting him to find suitable employment (being a direction which was reasonable having regard both to his circumstances and to the usual means of obtaining that employment); or
- (d) has without good cause failed to attend a course of instruction or training that the Commission directed him to attend for the purpose of becoming or keeping fit for entry into or return to employment.

(2) For the purposes of this section, employment shall be deemed not to be suitable employment for a claimant if it is

No disqualification where offer of employment arises out of labour dispute or where offer of less favourable employment.

- (a) employment arising in consequence of a stoppage of work due to a labour dispute;
- (b) employment in his usual occupation at a lower rate of wages or on conditions less favourable, than those observed by agreement between employers and employees, or failing any such agreement, than those recognized by good employers; or
- (c) employment of a kind other than employment in his usual occupation at a lower rate of wages, or on conditions less favourable, than those which he might reasonably expect to obtain, having regard to those which he habitually obtained in his usual occupation, or would have obtained had he continued to be so employed.

Offer of
employment
of other
kind at
lower wages
after
reasonable
time.

(3) Notwithstanding paragraph (c) of subsection two of this section after a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers.

(Amended 1946, s.7.)

1946 Section 40— Suitable Employment—VIII
(2) (a) Labour Dispute —VI

THE UNEMPLOYMENT INSURANCE ACT (1946)

Disqualifica-
tion through
loss of
employment
due to
misconduct.

41. (1) An insured person shall be disqualified from receiving benefit if he has lost his employment by reason of his own misconduct or if he voluntarily leaves his employment without just cause.

Discharged
for member-
ship in
union, etc.,
not deemed
loss for
misconduct.

(2) An insured person shall be deemed not to have lost his employment by reason of his own misconduct if he has lost his employment on account of membership in, or of lawful activity connected with, any association, organization or union of workers.

(Amended 1946, s.7.)

1946 Section 41—(2) Labour Dispute —VI
Misconduct —VII
Voluntary Leaving—X

THE UNEMPLOYMENT INSURANCE ACT (1946)

Right to
membership
in organiza-
tions of
workers
preserved.

43. Notwithstanding anything contained in this Act, no insured person shall be disqualified from receipt of benefit by reason only of his refusal to accept employment if by acceptance thereof he would lose the right

(a) to become a member of; or

(b) to continue to be a member and to observe the lawful rules of; or

(c) to refrain from becoming a member of
any association, organization or union of workers.

(Amended 1946, s.7.)

1946 Section 43—Labour Dispute —VI
—Suitable Employment—VIII

THE UNEMPLOYMENT INSURANCE ACT (1946)

Determination of Questions

45. If any question arises as to

Determination
of ques-
tions concern-
ing the rights
of persons.

- (a) whether any employment or any class of employment is or will be such employment as to make the person engaged therein an insured person or whether a person is or was an insured person;
- (b) who is or was the employer of any employed person;
- (c) the rate of contribution payable under this Act by or in respect of any person or class of persons or as to the rates of contribution payable in respect of any insured person by the employer and that person respectively; or
- (d) whether a person was or was not employed in any excepted employment or any insurable employment in respect of which contributions were not payable, or engaged in business on his own account, or employed outside of Canada or partly outside of Canada in an employment in respect of which contributions were not payable, or employed in an employment not described by Part I of the First Schedule to this Act, during any period falling within the period of two years specified in the first statutory condition;

the question shall, subject to the provisions of this Act, be decided by the Commission.

(Amended 1946, s.7.)

1946 Section 45—Adjudication Proceedings—I

THE UNEMPLOYMENT INSURANCE ACT (1946)

48. The Commission may, if it thinks fit, refer any question mentioned in section forty-five to the umpire for decision.

Commission
may refer
question to
an umpire.

(Amended 1946, s.7.)

1946 Section 48—Adjudication Proceedings—I

THE UNEMPLOYMENT INSURANCE ACT (1946)

Claim Procedure

54. All claims for benefit, and all questions arising in connection with such claims, shall be submitted for examination to one of the insurance officers.

Examination
and deter-
mination of
claims.

THE UNEMPLOYMENT INSURANCE ACT (1946)

55. (1) The insurance officer shall take into consideration any claim submitted to him for examination under section fifty-four, and

Consideration
of claims by
insurance
officer.

- (a) if he is of opinion that the statutory conditions have been fulfilled, he shall declare that a benefit year has been established; or

(b) if he is of opinion that the statutory conditions have not been fulfilled, he shall

(i) declare that a benefit year has not been established on the ground that one or more of the statutory conditions is not fulfilled, or

(ii) refer the claim, if practicable, within fourteen days from the day on which the claim was submitted to him for examination, to the court of referees for its decision.

Further
action by
insurance
officer.

(2) Notwithstanding, that a benefit year has been established, if the insurance officer is not satisfied that the claimant has fulfilled all the other conditions of entitlement to benefit or if he is of the opinion that the claimant is disqualified from receiving benefit, he shall

(a) refer the claim, if practicable, within fourteen days from the day on which the claim was submitted to him for examination, to the court of referees for its decision; or

(b) declare the claimant to be disqualified from receiving benefit from such day as he may determine, on the ground that

(i) the claimant has not proved fulfilment of the conditions contained in section twenty-seven;

(ii) the claimant does not fulfil one or more of the additional conditions or terms for the receipt of benefit imposed by regulation; or

(iii) the claimant is disqualified under sections thirty-nine to forty-two inclusive of this Act.

(Amended 1946, s.8)

1946 Section 55—Adjudication Proceedings—I

THE UNEMPLOYMENT INSURANCE ACT (1946)

PART V

Regulations

Regulations
concerning
persons
under same
employer
partly in
insurable
employment
and partly
in another
employment.

97. In addition to the authority elsewhere in this Act conferred upon the Commission to make regulations, the Commission may also make regulations:

(g) notwithstanding subsection one of section twenty-nine, prescribing the conditions under which contributions and benefit shall be paid in respect of Sundays and holidays;

1946 Section 97—Adjudication Proceedings —I

(g)—Unemployed (Sundays and Holidays)—IX

UNEMPLOYMENT INSURANCE REGULATIONS (1948)

16. (5) No person shall be a member of a court during the consideration of a case Members of panel disqualified.

- (a) in which he is or has been a representative of the claimant, or
- (b) by which he is or may be directly affected, or
- (c) in which he has taken any part either on behalf of an association, or as an employer, or as a witness or otherwise.

1948 Section 16(5) of the Benefit Regulations, 1948—Adjudication Proceedings—I

THE UNEMPLOYMENT INSURANCE ACT (1948)

98. (1) All regulations made under this Act shall be without effect until approved by the Governor in Council and published in the *Canada Gazette*, and shall then have effect as if enacted in this Act and shall be laid before Parliament within two weeks after approval, or, if Parliament is not then sitting, within two weeks after Parliament next sits; and any regulation may be varied or revoked by subsequent regulation made in like manner.

(2) Prior to the making of regulations under the provisions of section thirty-eight of this Act or in relation to the matters specified in subsections two and three of section eighty-four of this Act the same shall be reported on by the Unemployment Insurance Advisory Committee. Advisory Committee to report on certain regulations.

(Subsec. amended 1948, s. 17.)

(3) Any special order made under the provisions of this Act may be varied or revoked, by a special order made in like manner. Special order may be varied or revoked.

(Subsec. (3) added 1943, s. 16); (1946, s. 26—Formerly sec. 93 as amended in 1943, s. 16.)

1948 Section 98—Adjudication Proceedings—I

UNEMPLOYMENT INSURANCE REGULATIONS (1949)

Benefit Payable for Certain Days notwithstanding Section 29 (1) (a) of the Act

- 5. (2)(e) Where a claimant, upon termination of his employment (which for the purposes of this section includes a lay-off), receives pay in lieu of holidays accrued but not taken during his employment, he shall be entitled to benefit (notwithstanding the provisions of Section 29 (1) (a) of The Act) in respect of days subsequent to such termination, except where a holiday period (of at least one week declared for his grade, class or shift in the occupation or the premises where he earned the pay) commences within three days after such termination, and in such case he shall be disqualified only for a number of days immediately follow-

ing such termination, equal to the number of days which such pay represents or to the number of days (exclusive of Sundays) in the holiday period, whichever is the lesser.

Unemployed during Farming Off-season

5. (3) An insured person, whose main employment is the operation of a farm, may prove that he is unemployed in respect of his farming operations on any day during the months of October, November, December, January, February and March (hereinafter called the "farming off-season"), if he fulfills all the other conditions of entitlement to benefit, and produces evidence—

- (a) that, in the farming off-season for which he declares that he is unemployed and for which he is claiming benefit, he either does no work on the farm or the work performed by him thereon is so limited in extent that it does not prevent him from accepting full-time employment, and
- (b) that during the two off-seasons preceding the off-season in which he made such claim for benefit at least 180 contributions in the aggregate were recorded in his respect.

1949 Section 5(2)(e) of the Benefit Regulations, 1949—Unemployed (Holiday pay) —IX

Section 5(3) of the Benefit Regulations, 1949—Unemployed (Farming) —IX

UNEMPLOYMENT INSURANCE REGULATIONS (1950)

1. By adding after Section 5 thereof the following new section:

Disqualification of certain Married Women

"5A (1) Every married woman shall be disqualified from receiving benefit for the period of two years following her marriage unless she is relieved sooner from any such disqualification as provided in this section.

(2) In order to be relieved of any such disqualification, she shall, in addition to proving the fulfilment of all other conditions of entitlement to benefit, prove her attachment to the labour market by working, for an aggregate of at least 90 days, under a contract of service in excepted employment other than employment by persons connected with her by blood relationship, marriage or adoption, or in insurable employment, or partly in insurable employment and partly in such excepted employment; and the period within which such 90 days must fall shall commence on the day following her marriage if she was not then in employment, and shall commence on the day following her first separation from employment subsequent to her marriage if she was in employment at the time of her marriage; and after proving her attachment to the labour market as aforesaid she shall then be relieved of such disqualification for periods of unemployment subsequent to the last of such 90 days.

(3) No disqualification shall be imposed under this section upon a married woman whose first separation from employment following her marriage is by reason of a lay-off due to shortage of work, nor upon a married woman whose employment terminates within two weeks prior to her marriage or at any time following her marriage, solely by reason of her employer's rule against retaining married women in his employ.

(4) Where a married woman's husband has died, has become permanently and wholly incapacitated, has deserted her or has been permanently separated from her, she shall be relieved of any such disqualification from the date of any such occurrence."

1950 Section 5A of the Benefit Regulations—Married Women's Regulation—VIA
(Claims Matters)

THE UNEMPLOYMENT INSURANCE ACT (1950)

28. (1) The right of an insured person to receive insurance benefit shall be subject to the following conditions (in this Act referred to as "statutory conditions"), namely: Statutory conditions.

- (a) that contributions have been paid in respect of him while employed in insurable employment for at least one hundred and eighty days during the two years immediately preceding the day on which the benefit year commences; and
- (b) that contributions have been paid in respect of him while employed in insurable employment
 - (i) for at least sixty days during the period of fifty-two weeks immediately preceding the commencement of the benefit year, or during the period since the commencement of the immediately preceding benefit year, if any, whichever period is less; or
 - (ii) for at least forty-five days during the period of twenty-six weeks immediately preceding the commencement of the benefit year or during the period since the commencement of the immediately preceding benefit year, if any, whichever period is less.

(Effective July 3, 1950)

(Subsec. amended 1946, s. 7; 1950, s. 6)

(2) For the purposes of the statutory conditions, account shall be taken only of contributions paid in respect of the insured person for periods during which he was bona fide employed in insurable employment and was not exempt from the provisions of this Act. Contributions recognized.

(Subsec. amended 1946, s. 7)

(3) If an insured person proves in the prescribed manner that he was, during any period falling within the two years specified in subsection one of this section, Periods increased.

- (a) incapacitated for work by reason of some specific disease or bodily or mental disablement; or
- (b) employed in excepted employment; or
- (c) engaged in business on his own account; or
- (d) employed in insurable employment in respect of which contributions were not payable; or

- (e) employed outside of Canada or partly outside of Canada, in an employment in respect of which contributions were not payable; or
- (f) employed in an employment not described by Part I of the First Schedule to this Act,

then subsection one of this section and section thirty-one of this Act shall have effect as if, for each period therein referred to, there were substituted that period increased by the aggregate of the periods of such incapacity or of such employment or business engagement, but the increase so made in any period shall not in any case exceed two years.

(Effective July 3, 1950)

(Subsec. amended 1946, s. 7; 1950, s. 6)

1950 Section 28—Qualification—VIII B

THE UNEMPLOYMENT INSURANCE ACT (1950)

Periods not counted in computing unemployment: While in receipt of wages or compensation substantially equivalent to wages.

29. (1) An insured person shall be deemed not to be unemployed

- (a) during any period for which notwithstanding that his employment has terminated, he continues to receive
 - (i) remuneration, or
 - (ii) compensation for loss of, and substantially equivalent to, the remuneration he would have received if his employment had not terminated;
- (b) on any day on which, notwithstanding that his employment has terminated, he is following an occupation for remuneration or profit unless
 - (i) that occupation could ordinarily be followed by him in addition to, and outside the ordinary working hours of, his usual employment, and
 - (ii) the remuneration or profit received or earned therefrom for that day does not exceed two dollars or, where such remuneration or profit is in respect of a period longer than a day, the daily average of the remuneration or profit does not exceed that amount;

(Effective February 28, 1950)

(Para. amended 1950, s. 7)

Holidays.

- (c) on any day that is recognized as a holiday for his grade, class or shift in the occupation or at the factory, workshop or other premises at which he is employed unless otherwise prescribed;

Full working week.

- (d) on any day of any calendar week during which he works the full working week;

Sundays.

- (e) on any Sunday;

- (f) subject to the provisions of subsection six of section thirty-six, on any day prior to the day on which he makes a claim for benefit; or
- (g) on any day for which a contribution is required under this Act or regulations made thereunder.

Prior to claim.

Day for which contribution required.

(Para. (g) added 1948, s. 3)

(2) An insured person shall be deemed not to have failed to prove that he is available for work on any day on which he is or was attending a course of instruction or training that the Commission has directed him to attend.

(Amended 1946, s. 7)

1950 Section 29—(I)(b) Earnings and Unemployed—V and IX

THE UNEMPLOYMENT INSURANCE ACT (1950)

- 31.** (1) The daily rate of benefit for a benefit year

Rates of benefit.

- (a) for a person without a dependent, shall be thirty-four times the average of the one hundred and eighty most recent daily contributions paid by the insured person during the two years immediately preceding the commencement day of the benefit year; and
- (b) for a person with a dependent, shall be forty-five times such average, less ten cents from the product so obtained,

and the weekly rate of benefit shall be six times the daily rate.

- (2) In computing the average daily contribution

- (a) any contributions paid by the insured person for any period prior to the first day of July, nineteen hundred and fifty-one, at the daily rate of nine cents shall be deemed to have been paid at the rate of eight cents, for the purpose of computing his rate of benefit for periods prior to the first day of July, nineteen hundred and fifty-one; and
- (b) one cent shall be deducted from each daily contribution paid by the insured person after the first day of July, nineteen hundred and fifty;
- (c) fractions of a cent less than one-half shall be disregarded and fractions of a cent equal to or greater than one-half shall be taken as a full cent.

- (3) For the purposes of this section

- (a) a person with a dependent is
 - (i) a man whose wife is being maintained wholly or mainly by him; or
 - (ii) a married woman who has a husband dependent on her; or
 - (iii) a person who maintains wholly or mainly one or more children under the age of sixteen years; or

(iv) a person who maintains a self-contained domestic establishment and supports therein, wholly or mainly, a person connected with him by blood relationship, marriage or adoption;

(b) a child means a child of the insured person and includes his stepchild, adopted child or illegitimate child.

(4) Where the average daily contribution, computed in accordance with subsection two is the amount in column (1) below, the rates of benefit shall be the respective amounts set out in columns (2) to (5) inclusive below:

Average Insured Person Contribution	Rate of Benefit			
	Person without a Dependent		Person with a Dependent	
Daily	Daily	Weekly	Daily	Weekly
(1)	(2)	(3)	(4)	(5)
Cents	\$	\$	\$	\$
2.....	0.70	4.20	0.80	4.80
3.....	1.00	6.00	1.25	7.50
4.....	1.35	8.10	1.70	10.20
5.....	1.70	10.20	2.15	12.90
6.....	2.05	12.30	2.60	15.60
7.....	2.40	14.40	3.05	18.30
8.....	2.70	16.20	3.50	21.00

(Effective July 3, 1950)

(Amended 1946, s. 7; 1948, s. 5; 1950, s. 8)

1950 Section 31—(1) and (3) Dependency—IVA

UNEMPLOYMENT INSURANCE REGULATIONS (1951)

Additional Conditions Imposed Upon Certain Married Women

5A. (1) In order to receive benefit for any day of unemployment which occurs within the two years immediately following the date of her marriage, every married woman shall, in respect of any such day in addition to proving the fulfilment of all other conditions of entitlement to benefit, produce evidence satisfactory to an officer of the Commission of the fulfilment of any one of the following additional conditions, namely:

- (a) That she has worked for at least ninety days under a contract of service,
 - (i) in excepted employment other than employment by persons connected with her by blood relationship, marriage or adoption, or
 - (ii) in insurable employment, or
 - (iii) partly in such excepted employment and partly in insurable employment,

and the said ninety days of employment shall have been performed following her marriage but if she was in employment at the time of marriage, at least sixty of such days of employment shall have been performed after her first separation from employment subsequent to her marriage;

- (b) That her first separation after marriage from the employment in which she was engaged at the time of her marriage or her last separation from employment occurring within eight weeks prior to her marriage was in consequence of,
 - (i) the application of her employer's rule against retaining married women in his employ, or
 - (ii) a discharge on account of shortage of work, or
 - (iii) leaving voluntarily because she had just cause for reasons solely and directly connected with her employment.
- (c) That her husband has died;
- (d) That she has been deserted by her husband;
- (e) That she is permanently separated from her husband; or
- (f) That her husband is wholly incapacitated for work and that such incapacity has lasted for at least four consecutive weeks, and in such case this condition shall be deemed to have been fulfilled from the date of her claim for benefit but not prior to the commencement of the period of such incapacity.

(2) The conditions referred to in paragraphs (a) to (e) inclusive of subsection one, shall be deemed to have been fulfilled, in each case, upon the occurrence of the event or on the date of claim for benefit, whichever is the later, and when a married woman has proved the fulfilment of any one of the conditions referred to in the said subsection, she need not prove such fulfilment again in the said period of two years unless she contracts another marriage.

(3) The provisions of this section do not apply in respect of the period that a married woman continues to be designated as a short-time claimant by an officer of the commission, if she was in employment at the time of her marriage and, without interruption of such employment, remains employed by the same employer on a short-time basis.

1951 Section 5A of the Benefit Regulations—Married Women's Regulations—VIA
(Claims Matters)

UNEMPLOYMENT INSURANCE REGULATIONS (1951)

- 5. (2) (f) Notwithstanding the provisions of paragraph (e) of subsection one of section twenty-nine of the Act, where a claimant proves to the satisfaction of an insurance officer that his religious beliefs are such that he observes the Sabbath on Saturday, he is entitled to receive benefit for Sunday provided he fulfills all the conditions of entitlement to benefit in respect of that Sunday.

1951 Section 5(2)(f) of the Benefit Regulations—Unemployed (Saturday Sabbath) —IX

UNEMPLOYMENT INSURANCE REGULATIONS (1952)

- 5. (2) (e) Claimant considered unemployed while in receipt of certain moneys.

Where a claimant, at the occasion of, or subsequent to, termination of his employment, receives moneys from his employer or former employer

- (i) under a retirement, superannuation or pension plan or fund; or
- (ii) for overtime, such moneys shall, for the purpose of paragraph (f) of subsection one of section 29 of the Act, be deemed to have been received for days prior to the day of such termination.
- (f) Claimant not considered unemployed while in receipt of moneys—Number of days involved.

Where a claimant receives moneys from his employer or former employer, for purposes other than those mentioned in paragraph (e), the days in respect of which such moneys are deemed to have been received begin on the first day of the period in respect of which such moneys are paid or on the first day immediately subsequent either to the termination of his employment or to the last day he performs services, as the case may be; and where such moneys are not equivalent to the normal daily remuneration received by him from that employer.

- (i) in the case of wages paid to seasonal workers who are retained on the payroll at reduced salaries during the off-season or moneys paid in accordance with a guaranteed wage plan while the employees are not working, the number of such days is the actual number of days in respect of which such moneys are paid; and
- (ii) in the case of moneys paid for all other purposes, the number of such days is ascertained by dividing the aggregate moneys by the normal daily remuneration received by the claimant from that employer;

and, for the purposes of this paragraph, fractions of a day equal to or greater than one-half are taken as a full day and fractions less than one-half are disregarded; and the expression "normal daily remuneration" refers to the basic daily remuneration exclusive of overtime or other abnormal factors.

1952 Section 5(2)(e) and (f) of the Benefit Regulations—Earnings and Unemployed —V and IX

THE UNEMPLOYMENT INSURANCE ACT (1952)

Periods not
counted in
computing
unemploy-
ment.
Sundays.

"29. (1) No insured person is unemployed *within the meaning of this Act*

Day for
which con-
tribution
required.
Holidays.

- (a) on a Sunday, *unless otherwise prescribed*;
- (b) on a day in respect of which a contribution is required *to be recorded* under this Act or the regulations;
- (c) on a day that is recognized as a holiday for his grade, class or shift in the occupation or at the factory work-shop or other premises at which he is employed, unless otherwise prescribed;

Prior to
claim.

- (d) on a day prior to the day on which he makes a claim for benefit, unless otherwise authorized by subsection six of section thirty-six;

- (e) on any day of a calendar week if during *that calendar week* he works the full working week; Full working week.
- (f) on a day in respect of which he receives from his employer or former employer any money that is equivalent to the normal daily remuneration received by him from such employer or former employer, and where such money is not so equivalent, the Commission may prescribe the days and the number of days in respect of which such money shall be deemed to be received; or While in receipt of moneys equivalent to wages, from employer.
- (g) on a day on which he is following an occupation for the purpose of remuneration or profit, except where such occupation comes within the provisions of subsection two. While following any occupation for remuneration.
- (2) An insured person is unemployed and available for work within the meaning of this Act Periods counted in computing unemployment and availability.
- (a) on a day on which he is following, for the purpose of remuneration or profit, an occupation While following any occupation outside
- (i) that could ordinarily be followed by him in addition to, and outside of, the ordinary hours of his usual employment, and ordinary working hours where remuneration does not exceed two dollars a day.
- (ii) from which he receives or earns for that day a remuneration or profit not exceeding two dollars, or if it is in respect of a period longer than a day, when the daily average thereof does not exceed that amount; and
- (b) on a day on which he is attending a course of instruction or training that the Commission has directed him to attend." While attending approved course of instruction.

1952 Section 29—(1)(f) Earnings and Unemployed—V and IX

THE UNEMPLOYMENT INSURANCE ACT (1953)

INTERPRETATION

2. (1) In this Act and in any regulation or order made thereunder, Definitions.

- (d) "labour dispute" means any dispute between employers and employees, or between employees and employees, that is connected with the employment or non-employment, or the terms or conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises, or not; "Labour dispute."

1953 Section 2(1)(d)—Labour Dispute—VI

UNEMPLOYMENT INSURANCE REGULATIONS (1953)

5. (2) (e) Where a claimant receives from his employer or former employer moneys which fall under any of the following categories:

- (i) in consideration of the claimant undertaking to return to the employment of that employer when so required;
- (ii) in accordance with a guaranteed wage plan;
- (iii) for retirement leave credits; or
- (iv) in lieu of notice of termination of employment;

such moneys shall, for the purposes of paragraph (f) of sub-section (1) of section 29 of the Act, be deemed to have been received in respect of a period, the first day of which shall begin on the first day immediately subsequent to the termination of his employment or to the last day on which he performs services for that employer, whichever is the earlier, and if such monies are not equivalent to the normal daily remuneration received by him from that employer the number of such days comprised in that period shall be the actual number of days in respect of which such monies are paid in the case of monies mentioned in (i), (ii) and (iii) and the number of such days, in the case of monies mentioned in (iv), shall be ascertained by dividing the aggregate monies by the normal daily remuneration received by the claimant from that employer; and, for the purposes of this paragraph, fractions of a day equal to or greater than one-half shall be taken as a full day and fractions less than one-half shall be disregarded; and the expression "normal daily remuneration" shall refer to the basic daily remuneration exclusive of overtime or other abnormal factors.

1953 Section 5(2)(e) of the Benefit Regulations—Earnings and Unemployed—V and IX

THE UNEMPLOYMENT INSURANCE ACT (1953)

Insurance Benefit

Right of
insured
person to
insurance
benefit.

29. (1) Every person who, being insured under this Act, proves that he is

- (a) unemployed,
- (b) capable of and available for work, and
- (c) unable to obtain suitable employment,

and in whose case the conditions laid down by this Act are fulfilled, is, subject to the provisions of this Act, entitled to receive payments (in this Act referred to as "insurance benefit" or "benefit") at weekly or other prescribed intervals at such rates as are authorized by Section 33, so long as those conditions continue to be fulfilled and so long as he is not disqualified under this Act from the receipt of benefit.

(2) Notwithstanding subsection (1) or any other law, the Commission may make regulations providing that, in the case of a deceased person or a person of unsound mind, benefit may be paid to any person who, in the opinion of the Commission, is equitably entitled thereto or that, in the case of a juvenile under eighteen years of age, benefit may be paid to a person by whom such juvenile is mainly or wholly maintained. 1946, c. 68, s. 7.

Payment of benefit where applicant a juvenile, a person of unsound mind, or deceased.

(3) No person who has become entitled to receive benefit under this Act and who has afterwards, while his entitlement would otherwise continue, become incapable of work by reason of illness, injury or quarantine, shall, notwithstanding anything in this Act, be disqualified from receiving such benefit only by reason of such illness, injury or quarantine.

Illness during benefit period. New. 1952-53 c. 51, s. 3.

Section 29	(1)(a) Unemployed	—IX
(Section 27, 1946 renumbered)	(1)(b) Capable of and available for work	—III and II
	Unable to obtain suitable employment	—III

THE UNEMPLOYMENT INSURANCE ACT (1953)

30. (3) Where an insured person proves in the prescribed manner that he was, during any period falling within the two years specified in subsection (1),

Periods increased.

- (a) incapacitated for work by reason of some specific disease or bodily or mental disablement;
- (b) employed in excepted employment;
- (c) engaged in business on his own account;
- (d) employed in insurable employment in respect of which contributions were not payable;
- (e) employed outside of Canada or partly outside of Canada, in an employment in respect of which contributions were not payable; or
- (f) employed in an employment not described by Part I of the Schedule,

then subsection (1) and section 33 have effect as if, for each period therein referred to, there were substituted that period increased by the aggregate of the periods of such incapacity or of such employment or business engagement, but the increase so made in any period shall not in any case exceed two years.

1946, c. 68, s. 7; 1950, c. 1, s. 6.

1953 Section 30(3)—Qualification (Claims Matters)—VIIB

THE UNEMPLOYMENT INSURANCE ACT (1953)

31. (1) No insured person is unemployed within the meaning of this Act

Periods not counted in computing unemployment. Rep. and New. R.S.C. 1952, c. 337, s. 3.

- (a) on a Sunday, unless otherwise prescribed;

Sundays.

Day for which contribution required.	(b) on a day in respect of which a contribution is required to be recorded under this Act or the regulations;
Holidays.	(c) on a day that is recognized as a holiday for his grade, class or shift in the occupation or at the factory, workshop or other premises at which he is employed, unless otherwise prescribed;
Prior to claim.	(d) on a day prior to the day on which he makes a claim for benefit, unless otherwise authorized by subsection (6) of section 38;
Full working week.	(e) on any day of a calendar week if during that calendar week he works the full working week;
While in receipt of moneys equivalent to wages, from employer.	(f) on a day in respect of which he receives from his employer or former employer any money that is equivalent to the normal daily remuneration received by him from such employer or former employer, and where such money is not so equivalent, the Commission may prescribe the days and the number of days in respect of which such money shall be deemed to be received; or
While following any occupation for remuneration.	(g) on a day on which he is following an occupation for the purpose of remuneration or profit, except where such occupation comes within the provisions of subsection (2).
Periods counted in computing unemployment and availability.	(2) An insured person is unemployed and available for work within the meaning of this Act
While following any occupation outside ordinary working hours where remuneration does not exceed two dollars a day.	(a) on a day on which he is following, for the purpose of remuneration or profit, an occupation <ul style="list-style-type: none"> (i) that could ordinarily be followed by him in addition to and outside of, the ordinary hours of his usual employment, and (ii) from which he receives or earns for that day a remuneration or profit not exceeding two dollars or if it is in respect of a period longer than a day, when the daily average thereof does not exceed that amount; and
While attending approved course of instruction.	(b) on a day on which he is attending a course of instruction or training that the Commission has directed him to attend.

1953 Section 31(1)—(c) and (e)—Unemployed

—IX

—(f) and (g)—Unemployed and Earnings

—V and IX

(2)—

—Available for work and Unemployed—II and IX

THE UNEMPLOYMENT INSURANCE ACT (1953)

Disqualification for Benefit

41. (1) An insured person is disqualified from receiving benefit if he has lost his employment by reason of a stoppage of work due to a labour dispute at the factory, workshop or other premises at which he was employed unless he has, during the stoppage of work, become bona fide employed elsewhere in the occupation that he usually follows, or has become regularly engaged in some other occupation; but this disqualification lasts only so long as the stoppage of work continues.

Disqualifi-
cation through
loss of work
due to labour
dispute.

(2) An insured person is not disqualified under this section if he proves

Where no
disquali-
fication.

(a) that he is not participating in, or financing or directly interested in the labour dispute that caused the stoppage of work, and

(b) that he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage is taking place any of whom are participating in, financing or directly interested in the dispute.

(3) Where separate branches of work that are commonly carried on as separate businesses in separate premises are carried on in separate departments on the same premises, each department shall, for the purpose of this section, be deemed to be a separate factory or workshop. 1946, c. 68, s. 7.

Separate
factory or
workshop.

1953 Section 41 (Section 39, 1946 renumbered)—Labour Dispute—VI

THE UNEMPLOYMENT INSURANCE ACT (1953)

42. (1) An insured person is disqualified from receiving benefit if he,

Disqualifi-
cation for
neglecting
opportunity
to work or
failure to
attend
course of
instruction.

(a) after an officer of the Commission or a recognized agency or an employer has notified him that a situation in suitable employment is vacant or about to become vacant, has without good cause refused or failed to apply for such situation or failed to accept such situation when offered to him;

(b) has neglected to avail himself of an opportunity of suitable employment;

(c) has without good cause failed to carry out any written direction given to him by an officer of the Commission with a view to assisting him to find suitable employment (being a direction which was reasonable having regard both to his circumstances and to the usual means of obtaining that employment); or

(d) has without good cause failed to attend a course of instruction or training that the Commission directed him to attend for the purpose of becoming or keeping fit for entry into or return to employment.

No disqualifi-
cation where
offer of
employment
arises out
of labour
dispute or
where offer
of less
favourable
employment.

- (2) For the purposes of this section, employment shall be deemed not to be suitable employment for a claimant if it is
- (a) employment arising in consequence of a stoppage of work due to a labour dispute;
 - (b) employment in his usual occupation at a lower rate of wages, or on conditions less favourable, than those observed by agreement between employers and employees, or failing any such agreement, than those recognized by good employers; or
 - (c) employment of a kind other than employment in his usual occupation at a lower rate of wages, or on conditions less favourable, than those that he might reasonably expect to obtain, having regard to those which he habitually obtained in his usual occupation, or would have obtained had he continued to be so employed.

Offer of
employment
of other kind
at lower wages
after
reasonable
time.

- (3) Notwithstanding paragraph (c) of subsection (2) after a lapse of such an interval from the date on which an insured person becomes unemployed as, in the circumstances of the case, is reasonable, employment shall not be deemed to be not suitable by reason only that it is employment of a kind other than employment in the usual occupation of the insured person, if it is employment at a rate of wages not lower and on conditions not less favourable than those observed by agreement between employees and employers or, failing any such agreement, than those recognized by good employers. 1946, c. 68, s. 7.

1953 Section 42 (Section 40, 1946 renumbered)—Suitable Employment—VIII

THE UNEMPLOYMENT INSURANCE ACT (1953)

Period of
disqualifi-
cation.

46. (1) Where an insured person is disqualified from receiving benefit under section 42 or section 43, the period of disqualification shall be for such period, not exceeding six weeks, and shall begin on such day, as may be determined by the insurance officer, court of referees or umpire, as the case may be.

Disqualifi-
cation for
making false
statement.
Rep. and New.
R.S.C. 1952,
c. 337, s. 6.

(2) Where an insurance officer becomes aware of facts that in his opinion establish that an insured person or any person on his behalf has, for the purpose of obtaining benefit under this Act, made a false statement or a misrepresentation, the insurance officer may disqualify the insured person from receiving benefit for not more than the first thirty-six compensable days that occur after such day as he may determine, and such disqualification may be imposed notwithstanding that proceedings have been taken under any other provision of this Act in respect of the false statement or misrepresentation; any day for which an insured person is disqualified under this subsection shall be deemed to be a day for which he received benefit.

"Compen-
sable days."

(3) For the purposes of subsection (2) the expression "compensable days" means days in respect of which the person makes a claim for benefit in the prescribed manner and would be entitled to receive benefit but for this subsection. 1946 c. 68, s. 7; 1948, c. 29, s. 8.

1953 Section 46(2)—Punitive Disqualification—VIIA

THE UNEMPLOYMENT INSURANCE ACT (1955)

Regulations

42. The Commission may make regulations,

Regulations.

- (a) for permitting an employer to recover contributions, paid on behalf of insured persons, otherwise than from the wages for the period in respect of which the contributions were payable;
- (b) providing that in any case or class of cases where insured persons
 - (i) work under the general control or direct supervision of or are paid by, some person other than their actual employer, or
 - (ii) work with the concurrence of some person other than their actual employer on premises or property owned or occupied by that person, or on premises or property with respect to which that person has any rights or privileges under a license, permit or agreement,
 such other person shall for the purposes of paying contributions under this Act be deemed to be the employer of such insured persons in addition to the actual employer, and providing for the payment and recovery of contributions paid in respect of such insured persons;
- (c) providing for the return of contributions erroneously paid, less any benefits paid by reason thereof;
- (d) for allocating to particular insured persons payments of contributions made by an employer;
- (e) prescribing the cases in which contributions payable may be deemed to have been paid for the purposes of paragraph (c) of section 2;
- (f) for defining and determining "earnings" and "pay period" and for the allocation of earnings and contributions to pay periods and to weeks;
- (g) for establishing and determining the amount of earnings of insured persons and the amount of contributions payable;
- (h) prescribing the times when contributions shall be paid and recorded;
- (i) for writing-off unpaid contributions;
- (j) for determining the earnings and contributions paid or payable in respect of one or more employees of an employer who has failed to keep books, records or accounts as required under this Act; and
- (k) providing that contributions are not payable under this Act where contributions otherwise payable were not paid by reason of a false statement or misrepresentation by an insured person.

UNEMPLOYMENT INSURANCE REGULATIONS (Pre-1955)

Antedating

122. (1) Where a claimant considers that he has good cause for delay in making a claim for benefit, and makes application to have his claim made effective from a date earlier than the date on which he made his claim, such application may be approved if he proves

- (a) that on such earlier date he has in all respects fulfilled the conditions of entitlement to benefit and was in a position to furnish proof thereof; and
- (b) that throughout the whole period between such earlier date and the date he made his claim he had good cause for delay in making such claim and furnishing such proof.

(2) For the purposes of this section, such earlier date shall in no case be more than three months from the date on which he made his claim for benefit.

1954 Section 122—Antedate (Claims Matters)—IA

UNEMPLOYMENT INSURANCE REGULATIONS (Pre-1955)

Additional Conditions Imposed upon Certain Married Women

137. (1) In order to receive benefit for any day of unemployment which occurs within the two years immediately following the date of her marriage, every married woman shall, in respect of any such day, in addition to proving the fulfilment of all other conditions of entitlement to benefit, produce evidence satisfactory to an officer of the Commission of the fulfilment of any one of the following additional conditions:

- (a) that she has worked for at least sixty days under a contract of service
 - (i) in excepted employment other than employment by persons connected with her by blood relationship, marriage or adoption,
 - (ii) in insurable employment, or
 - (iii) partly in such excepted employment and partly in insurable employment,
 and the said sixty days of employment shall have been performed following her marriage, but if she was in employment at the time of marriage, such days of employment shall have been performed after her first separation from employment subsequent to her marriage;
- (b) that her first separation after marriage from the employment in which she was engaged at the time of her marriage or her last separation from employment occurring within eight weeks prior to her marriage was in consequence of
 - (i) the application of her employer's rule against retaining married women in his employ,
 - (ii) a discharge on account of shortage of work, or
 - (iii) leaving voluntarily because she had just cause for reasons solely and directly connected with her employment;

- (c) that her husband has died;
- (d) that she has been deserted by her husband;
- (e) that she is permanently separated from her husband; or
- (f) that her husband is wholly incapacitated for work and that such incapacity has lasted for at least four consecutive weeks, and in such case this condition shall be deemed to have been fulfilled from the date of her claim for benefit but not prior to the commencement of the period of such incapacity.

(2) The conditions specified in paragraphs (a) to (e) inclusive of subsection (1), shall be deemed to have been fulfilled, in each case, upon the occurrence of the event or on the date of claim for benefit, whichever is the later, and when a married woman has proved the fulfilment of any one of the conditions specified in the said subsection, she need not prove such fulfilment again in the said period of two years unless she contracts another marriage.

(3) The provisions of this section do not apply in respect of the period that a married woman continues to be designated by an officer of the Commission as a short-time claimant as defined in section 132 if she was in employment at the time of her marriage and, without interruption of such employment, remains employed by the same employer on a short-time basis.

1954 Section 137—Married Women's Regulation (Claims Matters)—VIA

UNEMPLOYMENT INSURANCE REGULATIONS (1955)

168. (1) For the purpose of carrying out the provisions of subsection (3) of section 47 of the Act.

- (a) "self-contained domestic establishment" means a dwelling house, apartment, room or other similar place in which, among other things, the dependant for whom the insured person claims, ordinarily has his residence, sleeps and has his meals or has his domicile;
- (b) "connected by blood relationship" refers only to the insured person's parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, uncles, aunts, nephews and nieces;
- (c) "connected by marriage" refers only to parents, grandparents, great-grandparents, brothers and sisters of the insured person's spouse and his stepchildren;
- (d) "connection by adoption" refers only to adoption by process of law; and
- (e) "adopted child" refers to a child adopted in any manner.

(2) Where the dependant mentioned in subparagraphs (i) or (iii) of paragraph (a) of subsection (3) of section 47 of the Act has ordinarily earned income (including unemployment insurance benefit) in excess of \$14 a week and the dependant mentioned in subparagraphs (ii) or (iv) thereof has ordinarily income in excess of \$14 a week from any source, such dependant shall not be considered as being maintained wholly or mainly by the claimant or as being dependent on the claimant.

1955 Section 168(1) and (2) of the Regulations—Dependency (Claims Matters)—IVA

UNEMPLOYMENT INSURANCE REGULATIONS (1955)*Special Rule Regarding Rate and Duration of Benefit*

188. The provisions of the new Act with respect to benefit shall apply to benefit years established under the old Act and not yet terminated on October 1, 1955, as well as to benefit years established as a result of applications for benefit pending under the old Act on October 1, 1955, except as regards rate and duration of such benefit which shall be as hereunder provided:

- (a) As regards rate of such benefit the weekly rate to be paid, in accordance with the new Act, shall be that shown in the table hereunder opposite the daily rate of benefit which would apply under the old Act were it not for the new Act.
- (b) As regards duration of such benefit no person shall, in respect of any converted benefit period, be paid benefit in excess of the daily rate established under the old Act multiplied by the number of benefit days remaining as of October 2, 1955 in the benefit year established under the old Act provided, however, that fractions of a dollar equal to or greater than one-half shall be taken as a full dollar and lesser fractions disregarded.

1955 Section 188(b) of the Regulations—Adjudication Proceedings (Transitional)—I

December 9, 1943 (Rehearing)

CUB 3
(French)

ADJUDICATION PROCEEDINGS (Board of Referees: claimant present, examination of witnesses, procedure, ultra vires (beyond Board's powers), Commission's responsibility re adjudication procedures, re claims procedures, re disqualification procedure, Disqualification—wording, Evidence: burden of proof on administration and on claimant, documentary, employer information and responsibility, oath (evidence under), rules of evidence, Jurisdiction of adjudicating authority—aspect raised by adjudication—legislation—procedure, Rehearing on Umpire's referral—other reasons, Umpire—appeal to—decision—hearing).

(The text of this decision, by reason of the nature of the appeal involved, cannot be readily digested without serious prejudice. Its importance and its continuing relevancy to the entire procedure of adjudication and to the rights of claimants thereunder favour its inclusion in entirety, with only the names of the parties involved being deleted.)

Decision

Appeal by the claimant and his union against the decision of the Court of Referees, rendered at Quebec on May 12, 1943, the complete file of which has been placed before me on November 15, 1943.

The Appeal, based solely on the grounds of Procedure and Form was pleaded by Mr. in the presence of the interested officials of the Commission.

The appellant does not touch upon the facts, as he alleges that by reason of the procedure followed by the Court of Referees, he is not conversant with the facts on which the decision is founded.

The grounds of appeal may be summarized as follows:

- (a) The appellant did not have the opportunity at the time of the hearing, to protect his interests and to assert his rights because of the following circumstances:
- (b) The time given to him was insufficient and the officers of the Commission have refused to take the necessary steps in order to enable his former employers and their employees to come and testify in his favour:
- (c) The deliberations of the Court of Referees were secret, held in the absence of the appellant who was deprived of the services of his attorney:
- (d) Witnesses were not sworn and no note was taken of their depositions:
- (e) The appellant had to pay the expenses of his witnesses:
- (f) The other party (the employer) was heard alone in the absence of the appellant, under circumstances unknown to the appellant:
- (g) The procedure followed was contrary to usage and to law and the appellant has thereby suffered a grave prejudice.

The record reveals that the witnesses were called and heard in the absence of the appellant and his attorney. The appellant was not advised of the tenor of these depositions although the Court of Referees had ordered a hearing and notified the appellant to attend.

Some notes of the evidence were taken and the decision recites the essential facts.

The time granted seems to have been sufficient.

The nature of this appeal brings me to make certain observations of a general character which may be useful to the interested parties since the Unemployment Insurance Act has been recently adopted in Canada and it is in the initial stage of its application.

The claim for benefits should not be considered as a litigation between the employees and the employer.

The claim results from a tripartite contribution by the employer, the employee and the Government to an Unemployment Insurance fund.

The employee's claim is directed to the Commission, which must grant it if it fulfils the requirements of the Act and refuse it in the opposite case, in order to safeguard the fund, of which it is the trustee.

The mechanism of the adjudication of these claims is simple, devoid of any complicated formality, in order to function with celerity and without useless costs.

A claim may go through three stages:

- (a) It is considered by the Insurance Officer who allows, disallows or refers it to the Court of Referees.
- (b) It is submitted by way of appeal or reference to the Court of Referees consisting of a Chairman and two members, one of whom represents the employers and the other the employees.
- (c) Lastly, it may be definitely judged by the Umpire who is a judge of a Superior Court and whose decision is final.

During the three stages, claims are never subjected to the restrictions of a rigorous formalism. Essential information should always be obtained by the most direct and least costly means.

According to circumstances, the Court of Referees hears cases which are submitted to it, simply on perusal of written records or on verbal evidence; the claimant may be heard at the discretion of the Court.

This Court of Referees is an administrative Board and not a Court of Justice.

Witnesses are not summoned by subpoena nor sworn.

Attorneys are not necessary and no fee is granted for their services; cost of proceedings is reduced to a minimum.

To sum up, this Court of Referees is not a judicial tribunal holding a regular trial subject to rules of a rigid procedure. It is evident that the designation of Court of Referees is not justified either by its nature or by the mode of its operation.

Lastly, the Umpire decides the appeals on records which are submitted to him. If he deems it advisable, he may hear the interested parties on the merits of the appeal. His function consists in insuring the just and equitable application of the provisions of the Act.

These general observations dispose of most of the appeal grounds, which are rejected. However, a last commentary, of great importance, ought to be added. Although the operation of the Court of Referees must have such a suppleness as to enable it to conform to the principle and aims of this social legislation, nevertheless, these Boards should not and cannot ignore a fundamental principle of law, to wit: no matter can be decided without the interested parties having had the opportunity to assert their rights. In other words, a decision should not be given against a party without this party having had a full opportunity to ascertain the facts, alleged against him, and to make thereto a full and complete answer.

In this case, the record reveals that the decision, under Appeal, has been, to a large extent, motivated by facts which have not been disclosed to the Appellant and which he did not have any opportunity to rebut. He had a right to know these facts and he should have been given every facility to offer an answer to them.

Considering:

- (a) The functions of the Umpire under the Unemployment Insurance Act.
- (b) The elementary principles already discussed.
- (c) The jurisprudence of Canadian, American and English Courts.
- (d) Decisions of the Umpire, in similar cases, rendered under the English Act, which is similar to the Canadian Act.

I come to the conclusion that the claim of the claimant should be considered anew by the Court of Referees in such a way as to enable him to exercise his rights and fully protect his interests.

This appeal is of an exceptional character and, therefore, this present decision is a specific case, the application and the interpretation of which should remain within the limitations set herein.

JURISPRUDENCE: Distinguished in CUB 396.*

Appeal of the claimant and his union referred back for rehearing.

October 15, 1945 (Affirmed)

CUB 55

AVAILABILITY (Antedate, Circumstances beyond the claimant's control or deliberately created, Prospects of employment, Restricted as to area and as to travel, Temporary non-availability).

CLAIMS MATTERS (Antedate).

A 56-year-old married claimant who had been employed as a lighthouse keeper's assistant in the Magdalen Islands, P.Q. from April 10, 1944 until January 6, 1945 when he was laid off as a result of the lighthouse being closed for the winter, applied for benefit on February 20, 1945, the earliest date on which his application could be transmitted through the mail owing to the remoteness and difficulty of access to the particular island. On April 30, 1945 the claimant had his first opportunity of coming over to the nearest local office at Grindstone, P.Q.

The application for antedate was allowed but the claimant was considered as not available for work during the period of antedate. A majority of the court of referees found however, there was no evidence to show that the claimant was not available for work because it was quite impossible, due to ice conditions in that district, for him to report to the local office.

Upon appeal, the claimant was given the benefit of doubt in that he apparently considered it his duty to remain on the job until the season was completed although it would have been reasonable for him to arrange for his release while weather conditions allowed him to leave the island. It was physically impossible for the claimant to leave when the employ-

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ment was terminated but as weather conditions are beyond the control of anyone it cannot be said that the claimant failed in any way "to make himself as available for employment as was in his power."

JURISPRUDENCE: Distinguished in CUB 259.

Appeal of the insurance officer dismissed.

May 28, 1946 (Affirmed)

CUB 74

ADJUDICATION PROCEEDINGS (Interpretation).

VOLUNTARY LEAVING (Grievances raised with immediate employer, not raised higher, Just cause not shown, Personal circumstances, Proof—onus on claimant, Suitability of employment as reason).

A 53-year-old claimant who had been employed as manager of a skating rink from November 20, 1944 to March 31, 1945 and from November 1, 1945 to December 5, 1945, had separated from his employment by reason of considerable disagreement with the Secretary of the company which owned the rink, as a result of which the claimant had notified the Secretary that "he had better get someone else to operate the rink to his liking".

The claimant was disqualified for voluntary leaving without just cause. A majority of the court of referees upheld the disqualification on the grounds that the claimant took no step whatsoever to have any grievance remedied before leaving his employment. The evidence before the court indicated that the manager of the rink was subject to the instructions and control of the Secretary acting on behalf of the company Directors.

Upon appeal, it was held that it was the duty of the claimant, as found by the court of referees, to exhaust every reasonable means of having a grievance remedied before leaving employment and there was nothing to show that the claimant had appealed to the Board of Directors to see if any amicable adjustment of existing difficulties could be made.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant dismissed.

May 28, 1946 (Reversed)

CUB 80

ADJUDICATION PROCEEDINGS (Commission's responsibility re claims procedures and re notices generally).

CLAIMS MATTERS (Antedate: good cause for delay not shown—recall from employer expected from day to day).

The claimant who had been employed as a shipper and had been laid off temporarily on December 7, 1945 due to a shortage of material, although he had been assured of further employment as soon as additional material was available, applied for benefit only eight weeks later on February 2, 1946. He gave as his reason for delay that he expected to be called back to work any day and had not wished to work for anybody else until he heard from his employer first.

The application for antedate was not allowed, it being noted that other employees in the same position and employment had filed their claims in the usual manner and that the claimant had applied only upon finding this out at the time of his return to employment at that place. A majority of the court of referees however allowed the application for antedate on the grounds that the claimant was not aware that he had to apply for benefit immediately he was out of work and that it was not until his return to work that he had found out 14 other employees had received benefit. The Chairman of the court of referees had dissented on the grounds that the Act had been in operation sufficiently long for the claimant to have been acquainted with its provisions.

Upon appeal, it was held that the claimant had not given good and sufficient reason for his failure to apply for benefit immediately upon separation, it having been stated in CUB 32 that lack of knowledge of the requirements although quite understandable earlier could no longer be accepted as a valid reason for failure to apply for benefit immediately upon separation.

JURISPRUDENCE: CUB 32q. * applied.

Applied in CUB 409*.

Appeal of the insurance officer allowed.

May 29, 1946 (Affirmed)

CUB 85

ADJUDICATION PROCEEDINGS (Interpretation).

LABOUR DISPUTE (Conditions of employment, Direct interest, Grade or class, Parties to the dispute, Picketing, Proof, Union-membership—rights of individual).

Section 43(a) of the Act (1940)

The claimant lost his employment with the Ford Motor Company at Windsor, Ontario on September 12, 1945 by reason of a work stoppage due to a labour dispute.

The claimant was disqualified under Section 43 of the Act and the court of referees unanimously maintained the disqualification. The claimant appealed on the grounds he was not financing, participating or directly interested in the dispute, was kept out of work by pickets, was not a member of the union and had never paid a cent in dues and had no vote when the union voted for strike action.

Upon appeal, it was held that it had been laid down under the British Act which followed identically the Canadian Act that the burden of proof was on the claimant of showing that he was not individually concerned in the dispute nor belonged to a grade or class of workers that included members that were participating, financing or were directly interested and that it was ordinarily to be presumed that if the issue in dispute directly affected, even adversely, the claimant's hours of work and wages, he was directly interested. There was noted the remarks of Mr. Justice R. C. Rand, who investigated the dispute, to the effect that the employees as a whole become the beneficiaries of union action and share in the fruits of unionist work and coverage and that it was "essential to the larger concern of the

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industry that there be mass treatment in the relation of employees to that (union) organization that is necessary to the primary protection of their interests." It was held finally that as the claimant's classification was included in the unit covered by the collective bargaining agreement at issue, he was an interested party to the dispute and directly interested in its outcome; the fact that an insured person belongs to another union or to no union at all does not 'ipso facto' make them parties without an interest in a labour dispute. Accordingly, it was not necessary to go into the question whether the claimant belonged to a grade or class of workers participating in the dispute.

JURISPRUDENCE: British Decisions quoted in support.

Applied in CUBs 127, 142†, 150*, 151†, 153†, 154*, 155†, 156, 158†, 191q.*, 322, 423, 1514q., 1521A and referred to in CUB 571.

Appeal of claimant dismissed.

May 29, 1946 (Reversed)

CUB 89

SUITABLE EMPLOYMENT (Change from usual employment as regards wage rate, Duration of unemployment—long, Good cause shown, Prevailing conditions, Proof, Reasonable interval).

Section 43 (b) of the Act (1940)

The claimant, a married woman, who had been employed, as a machine fitter from September 29, 1942 to October 18, 1945, earned 54c per hour when she was laid off upon the wartime work ending and no other work being available in the factory, filed a claim for benefit on October 30. On February 5, 1946 she refused an offer of employment at 25c per hour although after a certain apprenticeship the claimant could expect to earn approximately \$16.00 for a 40-hour week, on the grounds that the wages were too low.

The claimant was disqualified on the grounds the employment was suitable because of the length of time the claimant had been unemployed. A majority of the court of referees maintained the disqualification.

Upon appeal, it was held that the claimant had justification for her refusal in that the rate of pay was less than was customarily paid good employers or by agreement between employers and employees in the district, there being evidence that the employer had recognized this by making a request to the War Labour Board for permission to increase the starting pay of 25c, which is one of the lowest known starting rates in the local industries, to 29c per hour for the first six months.

JURISPRUDENCE: Distinguished in CUB 1648.

Appeal of the claimant allowed.

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†Not printed in Selected Decisions (ed. 1950) or digested to date.

July 6, 1946 (Affirmed)

CUB 103

SUITABLE EMPLOYMENT (Change from usual occupation, Domestic circumstances, Failure to apply, Suitability of offer—capability and health).

Section 43 (b) of the Act (1940)

A 45-year-old single claimant who had been employed with a government wartime inspection agency at \$151.00 a month from July 1942 until August 7, 1945 when he separated due to a shortage of work, refused on October 6, 1945 an offer of employment as a mill hand at 57c per hour on the grounds he was not familiar with this line of work but would do the work of their present truck driver if the latter were assigned instead to inside work. The claimant had previously refused employment in the City of Toronto on the grounds that he had to remain in the small nearby town where he resided, to take care of his mother.

The claimant was disqualified under Section 43 (b) (i) of the Act. A majority of the court of referees affirmed the disqualification on the basis of the claimant's admission that he had not applied for the situation until some considerable time had elapsed. The claimant then appealed further on the grounds that employment as a mill hand was not suitable for a person weighing 120 lbs who had never done heavy work.

Upon appeal, it was held that the claimant had not shown good cause for his failure to carry out the instructions which were not unreasonable in this instance.

JURISPRUDENCE: Applied in CUB 385*.

Appeal of the claimant dismissed.

July 25, 1946 (Affirmed)

CUB 116

CLAIMS MATTERS (Antedate: good cause for delay not shown—recall to work expected momentarily).

The six claimants in question had been employed by a national railway company as switchman until September 27, 1945 when they separated from employment. The claimants applied for benefit on or about October 11, 1945 stating that they were unable to work due to a miners' strike, the employer giving as reason for separation "Miners' holiday". The reason given for delay was that this was their first claim and that they did not have an understanding with the Unemployment Insurance Commission.

The application for antedate was disallowed. The claimants appealed on the grounds that they had expected the mine to resume operation from day to day and had delayed accordingly. The court of referees maintained the disallowance on the grounds there was no good cause simply because the claimants did not expect to derive any immediate benefit or because they were ignorant of the requirements.

Upon appeal, it was held that to establish good cause a claimant must show "that he is prevented from attending at a local employment office by conditions over which he has no control" and as in previous decisions,

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where it was stated that the Act had been in operation for several years and that lack of knowledge or ignorance of its provisions could not now be accepted as a valid reason for non-compliance, the claimants did not have good reason for delay.

JURISPRUDENCE: Earlier decisions applied.

Applied in CUBs 130q.*, 138q.*, 395, 591 and 1593 and referred to in CUB 283*.

Appeal of the claimants' union dismissed.

September 6, 1946 (Affirmed)

CUB 124

ADJUDICATION PROCEEDINGS (Interpretation).

VOLUNTARY LEAVING (Domestic circumstances—continuing, Grievances not raised, Just cause not shown, Personal circumstances, Suitability of employment as reason, Working conditions).

A 60-year-old married claimant voluntarily left on June 18, 1946 his employment since August 20, 1945, as a departmental store porter at \$22.50 a week because he was receiving less pay than the other porters and was unable to meet his domestic requirements. The employer stated that an increase in pay had been granted to employees who were efficient but the claimant was not included.

The claimant was disqualified for a period of six weeks for voluntary leaving without just cause and appealed stating that some others were drawing as much as \$30.00 a week and that the person hired as his replacement was paid \$27.50 per week. A majority of the court of referees maintained the disqualification, stating that the claimant's services had not been considered satisfactory, that the work for which he was originally engaged was of a temporary nature and that the employer did not engage persons of the claimant's age on their permanent staff.

Upon appeal, it was held that the claimant did not have just cause for leaving, it being noted that he had not attempted "to remedy any grievances he may have felt he had in regards to the condition of employment".

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant dismissed.

September 6, 1946 (Affirmed)

CUB 127

ADJUDICATION PROCEEDINGS (Commission's responsibility re policy, Jurisdiction of adjudicating authorities re legislation and policy).

LABOUR DISPUTE (Conditions of employment, Direct interest, Grade or class, Union—membership—rights of individual).

Section 43(a) of the Act (1940)

A 49-year-old married claimant who had been employed with the Anaconda American Brass Ltd. since February 13, 1929, lost his employment as a section-foreman on May 17, 1946, by reason of a work stoppage

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due to a labour dispute and applied for benefit on May 23, stating he was not a member of the Union, not contributing funds nor financing the stoppage and was not personally interested in the dispute.

The claimant was disqualified from benefit under Section 43(a) for the duration of the stoppage and appealed on the grounds he was not and had never been a member of the union that was on strike. The Court of Referees unanimously upheld the disqualification on the grounds that the claimant was covered by the bargaining agreement, not being within any of its excepted classes: a) all salaried employees, b) foreman and sub-foreman, c) first aid staff, etc., and was therefore directly interested in the dispute which involved, among others, questions of wages and working conditions. The Court also found that the claimant belonged to a grade or class of workers of which immediately before the commencement of the work stoppage, there were members employed at the premises, some of whom were union members and were participating in, or financing or directly interested in the dispute. The Chairman of the Court of Referees granted leave to appeal further to the claimant who then contended that while Section 43(a) applied to him, it should be changed so that a person who does not wish to join a union should be allowed benefit when he loses his employment through strike action in which he had no part whatsoever.

Upon appeal it was held that amendments to the Act were a matter of policy and beyond the Umpire's jurisdiction and that the unanimous decision of the court of referees was in accordance with the Act and CUBs 85, 86 and 87 involving similar circumstances.

JURISPRUDENCE: CUBs 85, 86* and 87* applied.

Followed in CUB 142†, referred to in CUB 571, and applied in CUB 423.

Appeal of the claimant dismissed.

November 21, 1946 (Affirmed)

CUB 146
(French)

ADJUDICATION PROCEEDINGS (Board of Referees: claimant present, majority decision—finding of fact, Evidence: employer information).

VOLUNTARY LEAVING (Grievances raised with employer, Just cause not shown, Personal circumstances, Suitability of employment, Working conditions).

A 38-year-old single claimant who had been employed at \$40.00 a week by an industrial employees' association from February 11 to May 25, 1946, voluntarily left his employment after having had his original resignation refused and then been excluded from a meeting with his employers at which his status was discussed. The employer stated that the claimant had left after having been notified he would eventually have to separate from his employment and that he had been officially dismissed as of June 17, 1946.

The claimant was disqualified a period of 23 days, namely, the actual period during which he was voluntarily unemployed for having voluntarily left without just cause. A majority of the court of referees maintained the

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†Not printed in Selected Decisions (ed. 1950) or digested to date.

disqualification being of the opinion that the claimant should not have left before ensuring he would be able to obtain other employment inasmuch as the situation was not as unbearable as he claimed.

Upon appeal, it was held that the question was one of fact only and that from the facts and the tone of the submissions it was evident that there was a considerable amount of friction between the claimant and his employers and, furthermore, the claimant had made up his mind to leave his employment despite efforts to adjust matters including a meeting to which he was invited but which he failed to attend.

JURISPRUDENCE: Applied in CUB 1500 and followed in CUB 1532.

Appeal of the claimant dismissed.

November 21, 1946 (Reversed)

CUB 156

LABOUR DISPUTE (Attributable to labour dispute, Direct interest, Lockout, Loss of employment, Picketing, Stoppage of work, Union-membership—rights of individual).

Section 43(a) of the Act (1940)

A 59-year-old married claimant who had been employed since January 2, 1912 by the Canada Wire & Cable Co., Leaside, Ont., lost his employment as a maintenance mechanic on July 8, 1946 by reason of a strike. In applying for benefit on July 16 he stated that he did not belong to the union there and was willing to go back to work but could not because he was locked out.

The claimant was disqualified under Section 43(a) of the Act. The claimant appealed stating that he had worked for 34 years and was due to retire in five years and did not see how he could benefit in any way by the union's demands. The court of referees unanimously removed the disqualification on the grounds that the claimant was unable to pick up his tools at the plant and was thus prevented from seeking employment in his occupation.

Upon appeal, it was held that there was no dispute as to the facts of the case: the strike was called on the morning of July 9 by a local of the United Electrical, Radio and Machine Workers Union with the object of obtaining an increase of 25¢ per hour, a 40-hour week and improved vacation periods together with a union contract. Accordingly the claimant was held to be directly interested in the dispute, although not a member of the union, for the reasons already stated in CUBs 85, 86 and 87. It was held that the question of the tools being left at work was not important in the case, not being the cause of separation but an incidental result; this allowed the conclusion to be drawn that the claimant still regarded himself as an employee of the company temporarily unemployed due to the dispute inasmuch as nothing had hindered him from taking his tools with him on the day the strike commenced, it being noted that in his submission on July 26 the claimant had made no reference to his inability to obtain employment for this reason.

JURISPRUDENCE: CUBs 85, 86*, 87* applied.

Referred to in CUB 571 and followed in CUB 1521A.

Appeal of the insurance officer allowed.

*Printed in Selected Decision (ed. 1950) and not digested to date.

November 22, 1946 (Affirmed)

CUB 159
(French)**ADJUDICATION PROCEEDINGS** (Board of Referees: claimant present, examination of witness, procedure unanimous decision—finding of fact.**MISCONDUCT** (Insubordination, Relations with others—supervisors, Voluntary leaving alternatively).**VOLUNTARY LEAVING** (Change in occupation, Grievances not raised, Just cause shown, Misconduct alternatively, Suitability of employment as reason, Tantamount to voluntary leaving).*Section 43(c) of the Act (1940)*

A 56-year-old married claimant who was registered as a labourer, lost his employment from March 6 to June 27, 1946 as a cleaner at 55¢ an hour when he refused to help carry some boxes on the grounds his work was rather of a cleaner.

The claimant was disqualified for having been discharged by reason of his own misconduct. The court of referees unanimously gave the claimant the benefit of doubt on the grounds the claimant was certainly not employed to carry boxes.

Upon appeal, it was held that the question to decide was one of fact only, namely, whether the order issued was of reasonable nature and should have been performed by the claimant, and that in the absence of any new facts there was no valid reason to interfere with the unanimous decision of the court of referees which had every opportunity of examining the claimant who appeared in person before them and of determining the justice of his claim.

JURISPRUDENCE: Applied in CUB 1464.

Appeal of the insurance officer dismissed.

December 23, 1946 (Affirmed)

CUB 190

ADJUDICATION PROCEEDINGS (Interpretation).**LABOUR DISPUTE** (Conditions of employment, Definitions and Examples, Existence of labour dispute, Extension of labour dispute, Incidents characteristic of labour dispute, Insistence and resistance of parties, Loss of employment, Merits irrelevant, Picketing, Separate premises, Sympathetic strike or lockout, Union—membership—rights of individual, Voluntary leaving).*Section 2(i)(d), 31(b)(i), 32 and 43(a) of the Act (1940)*

A 40-year-old married claimant lost his employment as a linotype operator from November 18, 1928 to May 31, 1946, with the Alberta Free Press Limited, publishers of the Edmonton Bulletin, Alta., under the following circumstances: on the morning of May 31, the claimant and his fellow workers (and claimants) were requested to perform certain work which they regarded as being contrary to their understanding with the publishers of the Edmonton Bulletin, the work being for another publication where a strike was in progress, the Edmonton Journal, a Division of the Southam Co. Ltd., and upon their refusal to perform the tasks requested, a stoppage of work resulted.

The claimant was disqualified for the duration of the stoppage under Section 43(a) of the Act. A majority of the court of referees maintained the disqualification.

Upon appeal, it was held that "the stoppage of work at the Edmonton Journal had all the characteristics of a labour dispute", namely, the insistence of the employer on certain matters affecting the conditions of employment and the equal insistence of the employees in refusing, the concerted action by the members of the union (the Edmonton Typographical Union, Local 604) who became separated from their employment in that collective capacity, the contending parties calling the dispute a strike and a lockout; the men who were parties to the dispute picketed the plant and were also in receipt of strike benefit from their union. Accordingly it was held that the claimant and those associated with him had lost their employment within the meaning of Section 43(a) of the Act. It was further held that Section 32 of the Act, which must be considered in conjunction with Section 31(b), applied "only to insured persons who become unemployed and apply for benefit, or who are already in receipt thereof and refuse to accept such employment as would jeopardize their rights", Section 31(b) of the Act emphasizing "the rights of an insured person to refuse to accept work at such plant or premises where a strike is in progress".

JURISPRUDENCE: Distinguished in CUB 287, and applied in CUB 379q.*, 400* and 1627.

Appeal of the claimant's union dismissed.

January 24, 1947 (Affirmed)

CUB 193

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous decision—general, Chairman of Board of Referees, Jurisdiction of adjudicating authority—procedure, Umpire—appeal to).

VOLUNTARY LEAVING (Just cause not shown, Suitability of employment as reason).

A 36-year-old married claimant who had been employed as a fireman with an RCAF Station from September 7, 1945 until January 21, 1946 and had drawn benefit thereafter, voluntarily left after one day, on June 21, 1946, his employment with a lumber company as a night watchman and fireman, on the grounds "(he) was not qualified for that job as (he) had no license to fire a high pressure boiler carrying 120 lbs. of steam".

The claimant was disqualified for voluntary leaving without just cause and the court of referees unanimously maintained the disqualification. The Chairman of the court however gave him leave to appeal to the Umpire "because of special circumstances involved."

Upon appeal, it was held that despite having definitely requested in many previous cases of such leave being granted that the specific grounds upon which such permission is given should be stated, there was nothing in the submission or in the evidence given before the court of referees which indicated any special circumstances warranting an appeal to the Umpire

*Printed in Selected Decisions (ed. 1950) and not digested to date.

nor was there anything in the submissions and facts before the Umpire which would justify his interfering with the unanimous decision given by the court of referees.

JURISPRUDENCE: Referred to in CUBs 232* and 248.

Appeal of the claimant dismissed.

January 24, 1947 (Affirmed)

CUB 196
(French)

ADJUDICATION PROCEEDINGS (Commission's responsibility re claims procedure, Disqualification,—revision, Evidence—medical certificates, Jurisdiction of adjudicating authority—aspect not brought to appeal, Umpire—decision).

AVAILABILITY (Capable of work, Domestic circumstances, Intention of claimant, Proof, Restricted as to hours, days and as to part-time work, Separated from regular employment, Voluntarily left—ignored by insurance officer).

CLAIMS MATTERS (Extension of qualifying period).

Sections 28(iii) and 29(2) of the Act (1940)

A 40-year-old widow who had been last employed as a shoe upper-stitcher on piece work from 1939 to December 23, 1943 when she left on her own accord, applied for benefit on August 21, 1946, stating she was not available for a complete working week as she had to keep house but could work three days at the beginning of the week.

The claimant was disqualified under Section 28(3) as not available. A majority of the court of referees maintained the disqualification, noting the claimant's statement that she had left her former employment on account of her health and although now recovered was capable of work only from 9:30 a.m. to 11:30 a.m. and from 2:00 p.m. to 5:00 p.m., i.e. the equivalent of three to four days regularly per week.

Upon appeal, it was held that the medical evidence did not appear to justify the extension of two year's period which was allowed the claimant under Section 29(2) of the Act and, accordingly, that she could not comply even with the first statutory condition (number of contributions required to qualify). It was held also that the claimant was not available for work within the meaning of the Act.

JURISPRUDENCE: Referred to in CUB 353*.

Appeal of the claimant dismissed.

February 10, 1947 (Affirmed)

CUB 201

ADJUDICATION PROCEEDINGS (Board of Referees: claimant present, examination of witnesses, unanimous decision—general, Interpretation).

VOLUNTARY LEAVING (Grievances not raised, Haste, Just cause not shown, Suitability of employment as reason, Working conditions).

A 35-year-old married claimant voluntarily left his employment from September 25 to October 10, 1946 as a restaurant chef at \$40.00 per week because his orders were not carried out. The employer stated that the claimant had not been in a position to give orders.

*Printed in Selected Decision (ed. 1950) and not digested to date.

The claimant was disqualified for having voluntarily left his employment without just cause. The claimant appealed, contending that as a chef he gave orders as to what was to be done and was not to be told off by any waitress when he was right. The court of referees unanimously maintained the disqualification, noting that there had been a dispute between the claimant who had been employed with the restaurant only two weeks and a waitress who had been employed there for some three years, over the price she was charging for meals and that the claimant had undertaken to fire the waitress as being within the powers attributed to chefs in the restaurant business.

Upon appeal, it was held to be obvious that the claimant had "acted in a hasty and arbitrary manner. If the claimant had any grievance at all, he should have used the ordinary procedure generally adopted and consulted those in charge of operating the restaurant. He failed to adopt this ordinary precaution but hastily left his employment. This, very definitely, brings the claimant within the disqualification as provided for in the Act for those who leave their employment without just cause". It was held there was no valid reason to disturb the unanimous conclusion of the court of referees which had the opportunity of examining the claimant.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant dismissed.

February 10, 1947 (Affirmed)

CUB 202
(French)

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—general, Chairman of Board of Referees, Umpire—appeal to).

SUITABLE EMPLOYMENT (Availability—disqualification only for refusal, Good cause not shown, Personal circumstances, Prospects of other work).

A 45-year-old married claimant refused an offer of factory employment because in a few days he would "be operating a wood shop and, furthermore, (had) a family of five to support (and could not) possibly accept at the present time".

The claimant was disqualified for a period of six weeks and the court of referees unanimously maintained the disqualification. The Chairman however gave leave to appeal for the purpose of knowing whether the claimant could have been considered as available for work.

Upon appeal, it was held there seemed to be no valid reason for the Chairman to have granted leave to appeal and, furthermore, the decision of the court of referees was in accord with the facts and the Act.

JURISPRUDENCE: Referred to in CUBs 232* and 248.

Appeal of the claimant dismissed.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

March 28, 1947 (Varied)

CUB 217

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—finding of fact—varied, Disqualification—revision, Jurisdiction of adjudicating authority re aspect raised by adjudication).

AVAILABILITY (Domestic circumstances, Efforts to find work, Intention of claimant, Married women, Restricted as to area and travel, Suitable employment—disqualification only as not available, Voluntarily left—delayed claim).

SUITABLE EMPLOYMENT (Availability—disqualified instead as not available, Change from usual employment as regards area, Conditions of employment—transportation facilities and travel distance, Domestic circumstances, Duration of unemployment—long, Good cause not shown, Prospect of other work, Voluntarily left last previous—subjective reasons, same as for present refusal).

Section 27 of the Act (1946)

A 30-year-old married claimant who had voluntarily left her previous employment as a nurse's aide at the local hospital from December 29, 1945 to January 31, 1946 at \$45.00 per month plus board and who had been in receipt of benefit since October 11, 1946 when she filed claim and registered for employment as a stenographer, refused an offer on January 16, 1947 of employment as a stenographer for a creamery in a town situated 25 miles away at the prevailing rate of \$16.00 to \$20.00 per week. She gave as her reasons that the expenses of an out-of-town position would be too high and that she had a prospect of similar employment with an automobile dealer who had just opened up in town.

The claimant was disqualified six weeks for refusal without good cause and appealed on the grounds her room and board, week-end travel expenses and housekeeping costs for her husband made the employment offered unsuitable. The court of referees unanimously removed the disqualification in view of the hardship entailed by the separation of the couple who have an established home and of the impossibility of daily transportation during the winter.

Upon appeal, it was held that to all intents and purposes, the claimant had withdrawn from the labour field, there being no evidence that the claimant during the more than eight months between voluntarily leaving employment and claiming benefit, had sought employment on her own behalf, and held further that the main question to decide is whether the claimant was actually available for employment. It was held that although "where married woman is a breadwinner of a family, a broad interpretation may be allowed both as to the suitability of employment as well as to the question of availability, the household duties of the claimant are of such a nature that they considerably restricted her availability" (CUB 171), and it appeared from the evidence that the claimant was not genuinely seeking employment. It was held evident that she had so restricted her availability as to not fulfil Section 27(1)(b) of the Act.

JURISPRUDENCE: CUB 171q.* applied. Referred to in CUB 234*.

Appeal of insurance officer allowed: disqualification regarding availability substituted however.

*Printed in Selected Decisions (ed. 1950) but not digested to date.

April 23, 1947 (Affirmed)

CUB 231

ADJUDICATION PROCEEDINGS (Board of Referees: claimant present, examination of witnesses, majority of decision—finding of fact).

VOLUNTARY LEAVING (Grievances not raised with employer, Just cause not shown, Misconduct alternatively, Suitability of employment as reason, Working conditions).

Section 41(1) of the Act (1946)

A 48-year-old married claimant applied for benefit on January 23, 1947, stating he had voluntarily left his employment as a cook since April 31, 1946, on January 9, 1947 because of an argument with the chef over the time taken off for lunch.

The claimant was disqualified for a period of six weeks from January 10 under Section 41(1) of the Act. A majority of the court of referees maintained the disqualification, noting that the restaurant's kitchen was running short-handed at the time and that the claimant following a heated exchange with the chef, had walked out to find on his return next morning that he was separated, the separation accordingly being either a question of voluntary leaving without just cause or of dismissal for misconduct.

Upon appeal, it was held that there could be no doubt that the claimant had voluntarily left his employment and that, if he thought he had been unfairly treated, he should have taken up his grievances with his employer instead of leaving his employment. It was accordingly held that the claimant had not had just cause and that there was no valid reason to disturb the majority decision of the court of referees which had the opportunity of hearing the claimant in person.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant dismissed.

April 25, 1947(Affirmed)

CUB 237

ADJUDICATION PROCEEDINGS (Chairman of Board of Referees, Interpretation).

VOLUNTARY LEAVING (Grievances—raised with the employer, Haste, Just cause not shown, Proof—onus on claimant, Prospects of other employment not investigated beforehand, Suitability of employment as reason, Working Conditions).

Section 41(1) of the Act (1946)

A 52-year-old claimant applied for benefit on January 2, 1947, stating he had voluntarily left his employment as a cook with a Calgary exploration outfit from January 15 to December 31, 1946 at \$175.00 a month plus room and board, because of poor working conditions. He stated he had had to work up to 14 to 15 hours daily, his helpers not being satisfactory and he being so tired he could not sleep nights; he had mentioned the matter to his employer in regard to a possible bonus but to no avail. He also stated that other working conditions such as space and equipment were also very poor. The employer reported that the number of men the claimant had to cook for varied from none to 23 and that helpers were supplied when warranted and replaced when unsatisfactory.

The claimant was disqualified six weeks for having voluntarily left without just cause. The court of referees unanimously maintained the

disqualification inasmuch as the amount of work did not appear to be beyond the claimant's capacity and the claimant had not satisfied the onus on him of showing that the conditions generally were intolerable. The Chairman of the court gave leave to appeal on the grounds that the conditions were "highly unsatisfactory" and in the absence of any decision that they must be intolerable to constitute just cause for leaving, this might be sufficient grounds. The claimant in his appeal indicated that his main objection was that the meals had to be served at any hour, instancing two occasions when the crew came in for supper starting at 6 p.m. up to 10:00 p.m., part of the crew even coming in at 1:00 a.m.

Upon appeal, it was held that "when conditions are highly unsatisfactory and not improved notwithstanding representations by the employee, the latter has (just) cause to leave his employment" and that in the present case the conditions, which prevailed in the camp, while they caused some discomfort to the claimant and his fellow employees, were to a large extent inherent in the work itself and its location, and, accordingly, would not constitute just cause for voluntary leaving.

JURISPRUDENCE: Distinguished in CUBs 436q. and 523.

Appeal of the claimant dismissed.

May 29, 1947 (Reversed)

CUB 246
(French)

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—reversed, Interpretation).

EARNINGS (Allocation, Bonuses, Holiday pay, Overtime credits, Usual remuneration).

UNEMPLOYED (Contract of service, Earnings, Leave of absence—compensatory—seasonal, off-season unemployment, Usual remuneration).

Sections 27(1)(a) and 29(1)(a)(i) of the Act (1946)

A 60-year-old widower who had worked as a canal labourer for the Department of Transport from April 15 to December 5, 1946 when his employment terminated with the closing of navigation, continued on his employer's payroll until February 3, 1947 by reason of overtime credits accumulated during the last season.

The claimant was disqualified from benefit up to February 2, inclusively, on the grounds he received remuneration during that period and could not be deemed to be unemployed under the Act. The court of referees unanimously removed the disqualification as from December 15th, 1946 holding that for the period up to that date, the claimant's statutory vacation period, the remuneration was paid directly for the period during which it was received but that for the period thereafter the remuneration, according to the wording of Section 29(1)(a)(i), was an indemnity inasmuch as it was not paid in consideration of the period after December 15, but rather for the earlier period when the overtime credits were accumulated. The court of Referees considered the fact that the claimant was kept on his employer's payroll did not change anything in the wording of the Section and was, "at the most, a matter of internal administration only which in no way affects either the legal consideration of the remuneration or its causality".

Upon appeal, it was held that there was no doubt that the claimant, under his compensatory leave and even though his work was completed, continued to receive a remuneration from December 15 until February 2, inclusively, and accordingly he could not be deemed unemployed during this period and, consequently, was not entitled to benefit.

JURISPRUDENCE: Applied in CUBs 288 and 1443, and referred to in CUB 1458.

Appeal of the insurance officer allowed.

June 10, 1947 (Varied)

CUB 259

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—finding of fact, varied, Insurance officer—general, Jurisdiction of adjudicating authority—aspect raised by adjudication).

AVAILABILITY (Domestic circumstances, Married women, Prospects of employment, Restricted as to area and travel, Voluntarily left—disqualified only as not available).

VOLUNTARY LEAVING (Availability—disqualification as not available only, Change of residence as cause, Domestic circumstances—continuing, Grievances not raised, Just cause not shown, Married women leaving the area, Proof—onus on claimant, Prospects of other employment—general, Transportation and travel as cause).

Section 41(1) of the Act (1946)

A 31-year-old married claimant who resided 20 miles from a southern Ontario town in which she had been employed as a sewing machine operator from August 6, 1946 at 40c per hour, voluntarily left on January 7, 1947 "because she was unable to get to work on time on account of road conditions".

The claimant was disqualified for a period of six weeks for having voluntarily left without just cause. The claimant appealed, stating that she and her family had had to move to the country because of her husband's health and, due to the amount of snow that winter, she found it impossible to work so far away from home, as having two children of school age she had to be home either during the day or the evening and there was a number of days that winter when the roads had been too bad for even postal delivery to be made. The insurance officer accordingly asked the court of referees to consider the claimant's availability for work as of the date she claimed benefit. The court of referees unanimously allowed the appeal and on their reading of CUB 55, also found the claimant available for work. The insurance officer appealed, stating, among others, that the claimant should not have taken the initiative of leaving inasmuch as there was no evidence that the employer was so dissatisfied with her irregular attendance as to be unwilling to retain her.

Upon appeal, it was held that the present case was quite different from CUB 55 which deals mainly with the claimant's inaccessibility to a local office of the Commission for the purpose of registering a benefit claim in due course on account of abnormal geographical and climatic conditions, and accordingly the principle of which did not go beyond the extremely narrow scope of these exceptional circumstances. It was further held

that the claimant had good cause to leave her employment but was not available for work inasmuch as according to the evidence the opportunities for work in the immediate vicinity of her home were too remote.

JURISPRUDENCE: CUB 55 distinguished.

Followed in CUB 1532.

Appeal of the insurance officer dismissed but disqualification for non-availability substituted

June 26, 1947 (Affirmed)

CUB 262

EARNINGS (Allowable).

UNEMPLOYED (Availability for full-time work despite employment, Earnings, Engaged on own account, Voluntarily left previous employment).

Section 27(1)(a) of the Act (1946)

A 57-year-old married claimant (of Hungarian extraction) who had been allowed benefit from November 26, 1946 after having voluntarily left his employment as a translator for a government authority in London, England, from October 9, 1945 to November 19, 1946 and who several weeks after filing claim opened up (in Canada) an office for the purpose of doing translation work, reported on February 18, 1947 earning \$16.50 for three days' work in the month of January and February and shortly thereafter an additional slight amount.

The claimant was disqualified for an indefinite period as from February 11, 1947 as not unemployed within the meaning of Section 27(1) (a) of the Act. In his appeal he stated that he had expended a total of \$334.98 in the period from the first of January to March 11, 1947 and had earned a gross income during this time of \$102.25. A majority of the court of referees maintained the disqualification on the grounds that his earnings during the month of February were \$38.75, exceeding an average of \$1.50 per day, and that having embarked on this undertaking, he "is generally deemed to be following an occupation for remuneration or profit even though for the time being the business shows no realized profits."

Upon appeal, it was held there was no doubt that the claimant was engaged in business and working on his own account and, therefore, could not be deemed to be unemployed, it having been stated in CUB 245 that: "As soon as an insured person under the Act enters into business on his own account and thereby becomes self employed, he places himself outside the scope of the Unemployment Insurance plan for the duration of his self employment. He cannot then draw any benefit for this period, no matter what his volume of business may be".

JURISPRUDENCE: CUB 245q.* applied.

Applied in CUBs 398* and 1571 and distinguished in CUB 426.

Appeal of the claimant dismissed.

*Printed in Selected Decision (ed. 1950) and not digested to date.

JUNE 26, 1947 (Reversed)**CUB 263****ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision, reversed).****VOLUNTARY LEAVING (Grievances not raised, Just cause not shown, Prospects of other employment not investigated, Suitability of employment as reason—wages below prevailing rate).***Section 41(1) of the Act (1946)*

A 68-year-old widower applied for benefit on March 6, 1947, stating he had voluntarily left his employment as a labourer from October 14, 1946 to February 22, 1947 at 45c an hour because he found the work too heavy for the wages and he could not live on less than \$20.00 per week. The employer stated he did not consider the work laborious even for a man of the claimant's age and that it had been definitely understood when the claimant had applied for employment, that the wages would be 45c an hour.

The claimant was disqualified for a period of six weeks under Section 41(1) of the Act and appealed on the grounds his wages were below the current rate. The court of referees unanimously removed the disqualification pursuant to CUB 63 in which the rate of pay was less than the prevailing one in the district. The insurance officer appealed on the grounds that CUB 63 had not held that "receipt of wages at less than the prevailing rate would have justified (the claimant) in leaving" and referred to CUB 176 instead.

Upon appeal, it was held that the claimant was not justified in leaving his employment without having some assurance of securing other work which he could immediately accept, inasmuch as the claimant had agreed to work under certain conditions which were observed by the employer and the wages were reasonable, taking into consideration the claimant's age and his physical limitations for work. It was noted that there was "no evidence that the claimant had not received fair treatment nor that, if he had any grievances, he took any step to have them remedied, nor (had) the claimant proved that an increase in pay had been promised to him." It was finally held that the court of referees had given CUB 63 an erroneous interpretation.

JURISPRUDENCE: CUB 63* distinguished.

Followed in CUB 1532.

Appeal of the insurance officer allowed.

September 10, 1947 (Reversed)**CUB 287****LABOUR DISPUTE (Direct interest, Extension of labour dispute, Grade or class, Participating, Picketing, Relief, Sympathetic strike or lockout, Union—membership—rights of individual, Violence, Voluntary leaving).***Sections 39 and 43(a) of the Act (1946)*

A 56-year-old married claimant who was a member of the United Brotherhood of Carpenters and Joiners, Local 494, lost his employment as a carpenter on May 9, 1947 with Dinsmore McIntyre Ltd., at Windsor, Ontario, by reason of a labour dispute at the factory.

*Printed in Selected Decision (ed. 1950) and not digested to date.

The claimant was disqualified under Section 39 for the duration of the stoppage. The court of referees unanimously removed the disqualification on the grounds that he had proven his entitlement to relief in virtue of his union's Constitution requiring under the circumstances that he cease work at the premises in question as well as the unwritten law in all unions that members who are not participating in a dispute, not cross picket lines and, accordingly, risk possible loss of union membership and, finally, on the grounds that the labour dispute did not affect the crafts or skills of carpenters in that any improvement in the working conditions of the labourers in dispute would have no bearing whatever on the crafts or skills which are considered a separate grade or class. The insurance officer appealed on the grounds the provision of the Union's constitution constituted an admission of participation by the claimant and, furthermore, requested the Umpire to consider, if the claimants were entitled for relief, whether the claimant had just cause for leaving under Section 41(1) of the Act, considering there was no evidence of any threats of violence.

Upon appeal, the facts were established to be as follows: the claimant was employed as a carpenter at premises in which were also employed men belonging to the International Hod Carriers Building and Common Labourers Union, which union was a party to a dispute with the employer as a result of which a stoppage of work took place. The claimant, on his own volition, ceased work in sympathy with the Hod Carriers, collected his tools and voluntarily became separated from his employment. It was held that in view of the claimant's very explicit statement "that when a strike is called by a Trade Union and has the consent of the parent body (the local Building Trades Council, consisting of five representatives from each of the building trades) and pickets are placed on the jobs, all tradesmen affiliated are compelled to respect the picket line according to sub-section 3 of section 10 of the Constitution of the parent body and the (local) Building Trades Council under a penalty of a fine", the claimant automatically became a participant in the dispute as well as an interested party. With regard to the union rights of a claimant under Sections 43 and 40(2)(a) of the Act, it was held, in accordance with CUB 190, that these sections did not apply to a claimant who was unemployed as a result of a stoppage of work due to a labour dispute.

JURISPRUDENCE: CUB 190 distinguished.

Applied in CUBS 518 and 1627.

Followed in CUB 571.

Appeal of the insurance officer allowed.

February 5, 1948 (Affirmed)

CUB 322

LABOUR DISPUTE (Direct interest, Financing, Grade or class, Participating, Shortage of work, Union membership, Working conditions).

Section 39(1) of the Act (1946)

A 51-year-old married claimant lost his employment since May 1939 to August 12, 1947 as a lampman at Sheritt Gordon Mines Ltd., Sherridon, Manitoba, on account of a stoppage of work due to a labour dispute at the mine where he was employed and filed a claim for benefit on August 29, stating that the "pickets would not allow him to return to work."

The claimant was disqualified under section 39(1) for the duration of the stoppage. The claimant appealed, stating he took no part in the strike, being prevented from returning to work by picket lines, and he had no vote in the strike even though the Rand Formula was provided by the union agreement and \$2.00 each month was taken off his cheque and turned over to the union of which he had not been and was not a member; the claimant also stated that he was one of only two persons employed in the Lamp Room, neither of whom belong to the union nor had any interest in the outcome of the dispute, their room being in a building separate from the others and kept under lock and key between shifts. The court of referees unanimously maintained the disqualification noticing that it was not denied that the claimant, through the check-off, was financing the labour dispute and also was directly interested therein and would be affected by its outcome. Leave to appeal was granted on the question whether a non-union employee was in a different position because the union did not comply with all the provisions of the law or of the bargaining agreement in dispute.

Upon appeal, it was held that as the stoppage of work was caused by a labour dispute created by the employer's refusal to approve the demands of the union, the claimant accordingly fell within Section 39 of the Act. As regards relief from that Section, it was noted that while the claimant had taken no active part in the labour dispute and was not a member of the union nor had any control over the means adopted by the union to finance it, his employment as a lampman was covered by the collective agreement and he himself admitted that his wages stood to be affected by the outcome of the labour dispute. It was held as stated in many previous decisions that "the fact that a claimant is not a union member does not, ipso facto, make him a party without interest in the labour dispute. Moreover, it is immaterial that this interest is adverse or not. Whenever the future working conditions of a claimant stand to be affected by the outcome of a labour dispute, he is directly interested within the meaning of Section 30 of the Act". (CUB 85 referred to by claimant)

JURISPRUDENCE: CUB 85q applied.

Applied in CUB 423 and followed in CUB 571.

Appeal of the claimant dismissed.

February 27, 1948 (Affirmed)

CUB 338

ADJUDICATION PROCEEDINGS (Board of Referees: procedure, unanimous—general, Evidence: burden of proof on claimant, employment history, employment officer opinion, medical testimony, Insurance officer—general).

AVAILABILITY (Capable of work, Prospects of employment, Restricted—generally, Separated from regular employment).

CAPABLE OF WORK (Availability affected, Permanent incapacity, Proof, Retired from former employment, Suitability for employment likely to be offered).

UNEMPLOYED (Earnings, Retired from regular employment, Usual remuneration).

Sections 27(1)(a) and (b), 29(1)(a) and 55 of the Act (1946)

A 68-year-old married claimant who had been employed as a grain checker from 1937 to July 1, 1947 at \$75.00 a month, applied for benefit on October 28, stating he had been laid off on July 1 on account of the business

having been sold. The local office noted that the claimant was crippled with rheumatism and required help to get in and out of the office and while in the office required the use of a cane and the support of various desks. The employer stated that the claimant had been paid a bonus of a year's salary, \$900.00, in June 1947, further that the claimant had been kept on the payroll "only as an act of more or less charity" and finally in their opinion, was in no physical condition to work. The local office reported that the claimant, according to their further inquiries, was not employable as a grain inspector in his present physical condition and by reason of his age, could not perform work on a full-time basis and during the latter stage of his employment attended at work infrequently and at his own pleasure.

The insurance officer elected under Section 55 of the Act, to refer the claimant's entitlement to benefit under Section 27(1)(a) and (b) of the Act, to the court of referees. The court of referees unanimously found the claimant to be deemed to be unemployed, inasmuch as Section 29(1)(a) required that the claimant continue to receive his remuneration, but it also found that the claimant was not available for work and accordingly disqualified him for an indefinite period on the grounds that his physical condition was such that he was not capable of nor available for work.

Upon appeal, it was held that the claimant failed to support his contention that he could "satisfactorily do the work for which he made application" by any proof or medical evidence and that there was no basis for disturbing the unanimous decision of the court of referees which was in accord with CUB 267: "When the nature of a claimant's physical incapacity is such that there is no reasonable probability to obtain or perform any work, he must be considered not capable of nor available for work within the meaning of Section 27(1)(b) of the Act".

JURISPRUDENCE: CUB 267q.* applied.

Distinguished in CUB 1077 and applied in CUB 1491q.

Appeal of the claimant dismissed.

March 23, 1948 (Reversed)

CUB 341

VOLUNTARY LEAVING (Just cause now shown, Prospects of other employment not investigated beforehand, Suitability of employment—part-time only).

Section 41(1) of the Act (1946)

A 25-year-old single claimant voluntarily left his employment from October 6 to November 4, 1947 as a presser and filed a claim on November 28, 1947, giving as his reason "work shortage". The claimant stated further that he had accepted this employment thinking it was a full-time job but had put in only about twelve hours in each of the last three weeks, there being enough work for three pressers but he being the fourth and, accordingly, being called upon to work only half-days at a time. The local office reported that the claimant had worked 30 hours, 18 hours, 13½ hours and 12 hours in the four weeks in question, this being the only work available for him.

The claimant was disqualified six weeks for voluntary leaving without just cause. The court of referees unanimously removed the disqualification

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on the grounds that the claimant was justified in view of having had to report on more than one occasion twice in one day for work, CUB 216 being distinguished on the grounds the circumstances were not parallel.

Upon appeal, it was held that the insurance officer had rightly applied the principle stated in CUB 216: "it is desirable in a general sense and in the interest of all concerned that, where a claimant has the opportunity of being partially employed, he should remain in that employment in the hope in the meantime of finding other or additional work, rather than to become totally unemployed" and held therefore that the claimant was not justified in leaving his employment even though the weekly sum he was earning as a part-time employee was insufficient for his maintenance and that of his two dependents.

JURISPRUDENCE: CUB 216q.* applied.

Followed in CUB 605.

Appeal of the insurance officer allowed.

September 22, 1948 (Reversed)

CUB 395

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision—finding of fact—credibility, Evidence: burden of proof on claimant).

AVAILABILITY (Antedate, Voluntarily left—just cause).

CAPABLE OF WORK (Separation from employment in this connection, Workmen's compensation).

CLAIMS MATTERS (Antedate—good cause for delay not shown).

Sections 27(1)(b) and 36(6) of the Act (1946)

A 43-year-old married claimant who had been last employed as a foreman in a hosiery mill from March 1925 to April 21, 1948, filed a claim for benefit on April 27, stating he had voluntarily left because it was not suitable for his health. He failed to comply with the local office's request to produce evidence of his capability for work until May 26, when he filed a renewal claim and applied to have it antedate to April 27, stating he had been unable to bring in the medical certificate before, as he was unable to obtain it from his doctor while his claim for workmen's compensation was pending. The medical certificate stated that the claimant was suffering from hernia and was therefore only able to do light work. Meanwhile the claimant had been disqualified on May 10 for an indefinite period starting April 27 as not capable of work.

The disqualification was removed effective May 26, the date of renewal, but the claimant's application for antedate was refused on the grounds that good cause for delay had not been shown. The claimant stated in appeal that he had not followed up his application of April 27 because of instructions from his former employer. A majority of the court of referees allowed the application for antedate in view of the claimant's very impressive sincerity and the fact that compensation claims are very often delayed and the claimant had acted according to the instructions of his employer. The Chairman dissented on the grounds the claimant could very easily have

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contacted the local office and had he done so on May 4, any doubt in his mind would have been clarified. The insurance officer appealed in the light of CUBs 52, 102, 286.

Upon appeal, it was held that the claimant, according to the evidence, was not prevented from attending the local office by conditions over which he had no control, a requirement enunciated in CUB 116, and had chosen for reasons of his own not to comply with the request of the local office to file a medical certificate until his claim for workmen's compensation had been dealt with.

JURISPRUDENCE: CUBs 52*, 102*, 286* and 116q. applied.

Applied in CUB 1593.

Appeal of the insurance officer allowed.

December 10, 1948 (Affirmed)

CUB 422

(French)

VOLUNTARY LEAVING (Haste, Just cause not shown, Personal circumstances, Prospects of other employment investigated beforehand, Suitability of employment—lay-off expected).

Section 41(1) of the Act (1946)

A 38-year-old married claimant who had been employed as an apprentice carpenter from April 28 to July 17, 1948, filed a renewal claim on August 7, stating he had separated because he "knew there would have been a lay-off in (his) class and that (he) would be laid off and moreover (he) had an opportunity to get employment as a labourer for (a contractor)". The employer reported that it was possible that there would be a lay-off in the claimant's department within one or two months. The claimant stated on August 19, that he did not work for the contractor because, although he was supposed to start on August 2, he did not go but instead sought work, in another town, with another employer to whom he was recommended, without success however.

The claimant was disqualified for a period of six weeks from July 18, under Section 41(1) of the Act. A majority of the court of referees maintained the disqualification. The claimant appealed, and instanced in support of his good faith the fact that he had waited 15 days before claiming benefit as he had thought he would start work any day.

Upon appeal, it was held that "the claimant acted too hastily in giving up his employment when there appeared to be no reason for him to anticipate an immediate lay-off and when he had not definitely secured work elsewhere".

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant dismissed.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

December 10, 1948 (Reversed)

CUB 423

(French)

LABOUR DISPUTE (Conditions of employment, Direct interest, Grade or class, Merits irrelevant, Picketing, Union membership).

Section 39 of the Act (1946)

The claimant who was employed as a stitcher with the St. Johns Textile Co., St. Johns, P.Q., from 1932 to July 10, 1948, filed a claim for benefit on July 30, stating she had lost her employment by reason of a stoppage of work and stating further that she was not a member of Local 932 of the United Textile Workers of America which was on strike. The union had an agreement, due to expire on November 17, 1948, with the company and its two subsidiaries, according to which the union was recognized as the sole bargaining agent for all their employees, excepting those classified as executive and administrative as well as permanent guards and firemen. As far back as December 1947, there was disagreement as to the interpretation and application of certain clauses dealing with union security, check-off, grievances' procedure, etc.; following conciliation, a union meeting decided on a strike which took place on July 12, a picket line being established. The condition upon which the union agreed to return to work was an amendment to the existing agreement which would provide for a "closed shop".

The claimant was disqualified under Section 39 of the Act. The court of referees unanimously removed the disqualification on the grounds the claimant was not interested in the labour dispute, even indirectly, inasmuch as the working conditions could not be changed before the expiration of the contract and even though a few stitchers had joined the union since the beginning of the stoppage, this would not make the claimant a member of their grade or class in the light of B.U. 565 which stated that "the fact that one man is a member of the union and the other is not, may show a difference of grade that is not revealed in industrial organizations", and of B.U. 608 which relieved those persons who are victims of a dispute in which they have no concern or interest.

Upon appeal, it was held that the claimant was directly interested inasmuch as her employment was covered by the bargaining agreement, the application of which, insofar as it concerned working conditions, i.e. grievances' procedure etc., was one of the causes of the dispute and to this extent the claimant's working conditions stood to be materially affected by the outcome of the dispute. The court of referees was referred to CUBs 85, 127, 191 and 322 according to which the fact that a claimant is not a union member does not, "ispsso facto", make him a party without interest in a labour dispute, it being immaterial moreover, whether this interest is adverse or not.

JURISPRUDENCE: CUBs 85, 127, 191* and 322 applied.

Referred to in CUB 571 and followed in CUB 1521A.

Appeal of the insurance officer allowed.

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May 11, 1949 (Affirmed)

CUB 429

VOLUNTARY LEAVING (Haste, Just cause not shown, Proof—onus on the claimant, Prospects of other employment not investigated beforehand, Suitability of employment).

Section 41(1) of the Act (1946)

A 51-year-old claimant who had been hired as an accountant by a manufacturing company on September 29, 1948, applied for benefit on October 2, stating he had voluntarily left on September 30 because he felt he could not handle the work. The employer reported he had worked either $1\frac{1}{2}$ or 2 hours only.

The claimant was disqualified for a period of six weeks under Section 41(1) of the Act. The claimant appealed, stating that he had discovered that his employer was in poor financial condition, almost in liquidation, and added there were other facts he did not think he should disclose (publicly). The court of referees unanimously maintained the disqualification.

Upon appeal, it was held that the claimant's evidence was both nebulous and inconclusive and, on the basis of the claimant's statement in appeal to the court of referees that had he known he was subjecting himself to disqualification he certainly would have stayed on and worked his way out in another manner, it was held that he was too hasty in severing his connection with his employer when he had no other reasonable prospects of work although he would have established just cause if he had shown he would have been called upon to perform work which is against moral or business ethics.

JURISPRUDENCE: Distinguished in CUB 811 and followed in CUB 1532. *Appeal of the claimant dismissed.*

May 11, 1949 (Varied)

CUB 430

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision—finding of fact, ultra vires, Jurisdiction of adjudicating authorities re aspect raised by adjudication).

AVAILABILITY (Circumstances beyond claimant's control, Domestic circumstances, Intention of claimant, Prospects of work, Restricted as to area, Voluntarily left—disqualification only for voluntary leaving maintained).

VOLUNTARY LEAVING (Availability questionable, Change in residence, Domestic circumstances—temporary, Haste, Just cause not shown, Prospects of other employment not investigated beforehand, Working conditions—family living accommodation).

Sections 27(1)(b) and 41(1) of the Act (1946)

A 20-year-old married claimant applied for benefit on October 4, 1948 stating he had been employed for a year as a drill press operator in the City of Hamilton at \$13.00 a day when he voluntarily left on September 28, 1948 because he could no longer find living accommodation for his wife, child and self.

The claimant was disqualified for a period of six weeks under Section 41(1) of the Act. The claimant appealed, stating he had been forced to vacate on September 30 and after two weeks of seeking unsuccessfully

other suitable accommodation he had returned with his family to the home of his parents in Port Colborne, about 50 miles away. A majority of the court of referees maintained the disqualification (CUB 337) and imposed an additional disqualification for non-availability as he could not leave his family.

Upon appeal, it was held that the claimant was properly disqualified, as per CUB 337, for having voluntarily left without just cause suitable and highly remunerative employment when he had no definite prospects of obtaining work in Port Colborne. As regards his availability, however, it was held that "availability for work is primarily a subjective matter which must be considered in the light of a claimant's intention and mental attitude towards accepting employment. Viewed objectively, it might be determined by a claimant's prospects of employment in relation to a certain set of circumstances beyond his control or which he has deliberately created". In the claimant's case, it was held, in view of his request for any kind of employment and the fact that there should be work for such a person in Port Colborne, which has a population of approximately 7,000 and is somewhat of an industrial town, that the claimant was available at the time of claiming benefit, subject to an opposite finding should his prospects of obtaining work there become remote and he still insist on accepting work in that area only.

JURISPRUDENCE: CUB 337* applied.

Distinguished in CUBs 471q., 610q. and 803, and applied in CUBs 433q., 439q., 567q. and 819.

Appeal of the claimant allowed with respect to availability only.

May 11, 1949 (Reversed)

CUB 431

ADJUDICATION PROCEEDINGS (Interpretation).

SUITABLE EMPLOYMENT (Availability—disqualification only for refusal, Change from usual occupation and wage rate, Duration of unemployment—long, Good cause not shown, Married women, Reasonable interval, Voluntarily left last employment—subjective reasons for the same reasons as present refusal).

Section 40 of the Act (1946)

A 26-year-old claimant, who had been employed as a commercial dietitian by a municipal hydro utility at \$135 a month from December 1945 until March 15, 1948 and who had applied on June 29, 1948 for benefit, which was allowed, stating she had left voluntarily to get married, refused, on September 13, 1948, an offer of employment as a filing clerk with a mail order firm at \$20.00 a week, on the grounds of low salary and the type of work.

The claimant was disqualified for a period of six weeks under Section 40(1) (a) of the Act. The court of referees unanimously removed the disqualification on the grounds that in determining what would be a reasonable period of unemployment for the purpose of Section 40(3) of the Act, only that period during which the claimant sought employment, that is after June 29, should be considered. The claimant explained that she was married on April 17 and was not available for work until June 29 because of travel and the securing of suitable living accommodation.

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Upon appeal, it was held "that claimants who have deliberately remained outside the labour field for reason entirely within their control, should not be regarded in the same manner under subsection (3) of Section 40 of the Act as those who were forced, for reason beyond their control, to withdraw from the labour field", the period of unemployment for this purpose commencing with respect to the latter only from the date they registered for employment, as in the case of illness (CUB 33) but commencing immediately in the case of a claimant who, for her own reasons, had withdrawn from the labour field following her marriage (CUB 314).

JURISPRUDENCE: CUB 33* distinguished and CUB 314* applied.

Applied in CUBs 573q., 780q. and 1057.

Appeal of the insurance officer allowed.

May 11, 1949 (Affirmed)

CUB 436

VOLUNTARY LEAVING (Grievances not raised, Haste, Just cause not shown, Proof—onus on claimant, Suitability of employment, Working conditions).

Section 41(1) of the Act (1946)

A 40-year-old single claimant who had worked as a cook for a lumbering firm from December 7 to December 29, 1948, applied for benefit on January 10, stating that he had quit of his own accord as his employer did not supply him with sufficient equipment to carry on.

The claimant was disqualified for six weeks under Section 41(1) of the Act. The claimant stated in his appeal that he had not wished to ruin his good reputation as a cook although he admitted before the court of referees that the forty men he fed had never complained. A majority of the court of referees considered that the provision of supplies and equipment was the responsibility of the employer in which the claimant had no voice unless the workers were markedly deprived, particularly in view of the rigid provincial inspections in this regard.

Upon appeal, it was held that the claimant had acted too hastily and that the evidence did not indicate that the claimant's conditions of work were highly unsatisfactory or that he had exhausted every reasonable means of having his grievances remedied before leaving his employment, CUB 237 being distinguished on these grounds.

JURISPRUDENCE: CUB 237q. distinguished.

Followed in CUB 1532.

Appeal of the claimant dismissed.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

May 11, 1949 (Reversed)

CUB 437

SUITABLE EMPLOYMENT (Availability—disqualification only for refusal, Change from usual area and conditions—transportation facilities, Domestic circumstances, Duration of unemployment—long, Good cause not shown, Married woman, Prospects of other work, Reasonable interval).

Section 40(1)(a) of the Act (1946)

A 23-year-old married woman who had been employed as a secretary-typist in her home town of Gravenhurst, Ont. from December 1946 to August 14, 1948 and drawing benefit thereafter, refused on December 3, 1948 an offer of permanent employment as a bank clerk in Port Carling, Ont. on the grounds there was no transportation available for daily commuting. The local office reported there was no employment available in Gravenhurst and Port Carling was the nearest locality where there was.

The claimant was disqualified for a period of six weeks for her refusal and appealed on the grounds there was no means of transportation and she could not board in Port Carling because her husband and her home was in Gravenhurst. The court of referees removed the disqualification.

Upon appeal, it was held "that a young married woman must, unless there are special circumstances, be ready to take work on the same conditions as a single woman", it being noted that, during the three and a half months preceding the offer, both the local office and the claimant had been unsuccessful in finding any kind of work for the claimant, Port Carling was the nearest town (25 miles away) in which employment could be found and the claimant's prospects in Gravenhurst were remote.

JURISPRUDENCE: Applied in CUBs 568, 797q. and 1113, followed in CUB 1152A and distinguished in CUB 1692.

Appeal of the insurance officer allowed.

May 25, 1949 (Reversed)

CUB 444

SUITABLE EMPLOYMENT (Change from usual employment as regards to occupation, Duration of unemployment—brief—long, Failure to apply, Good cause not shown, Prevailing conditions, Previous offer not accepted either, Reasonable interval, Voluntarily left last previous employment—employment had been felt unsuitable).

Section 40 of the Act (1946)

A 23-year-old single claimant who had been in employment as a government office clerk from February to May 1948, at \$85.00 a month, had voluntarily left on the grounds the wages were too low and who had been continuously unemployed until November 1, 1948 when she worked till November 10 as a city tax clerk, refused on November 12 an offer of temporary employment with a departmental store in "box folding" at \$21.00, because "it was factory work". The local office reported the possible duration of the employment offered was five weeks and that the claimant left the impression with the employer that she did not want any job he had to offer.

The claimant was disqualified for a period of five weeks from November 13 because she had without good cause neglected to avail herself of an opportunity of suitable employment. The court of referees unanimously

removed the disqualification in the light of the claimant's industrial record and the termination of her last employment only two days previous, finding the employment not suitable.

Upon appeal, it was held, as per the insurance officer in his appeal, that "a short period of temporary or casual employment during a long period of unemployment does not nullify the operation of Section 40(3)", in other words, does not make the interval during which the claimant has been unemployed, become unreasonably short. It was also held that the temporary work offered was not only in accordance with the prevailing rate of pay in the district but similar to that which "she had earned in any occupation she followed since October 31, 1947".

JURISPRUDENCE: Distinguished in CUB 1621q.

Appeal of the insurance officer allowed.

May 25, 1949 (Reversed)

CUB 445

ADJUDICATION PROCEEDINGS (Disqualification—indefinite—procedure).

AVAILABILITY (Capable of work, Disqualification duration—indefinite, Proof, Prospects of employment, Restricted as to duration and part-time, Separated from regular employment, Voluntarily left—disqualification only as not available).

CAPABLE OF WORK (Availability affected as a result, Disqualification duration, Separation from employment in this connection, Suitability from employment likely to be offered).

Section 27(1)(b) of the Act (1946)

A 30-year old single claimant who was employed as a welter in a knitting mill at Hamilton, Ontario from 1945 until January 12, 1949, applied for benefit on the following day, stating that she had been working part-time for the past two months and had been replaced by a full-time worker upon her refusal of full-time employment, a medical certificate being submitted to the effect that the claimant was only able to work from nine a.m. to four p.m. for the next three months. The local office reported that the claimant had restricted her employment to work in which she would be sitting down and only from 9 a.m. to 4 p.m. until approximately March 8, 1949 and that it was not likely she could be placed elsewhere in view of her restriction.

The claimant was disqualified for an indefinite period under Section 27(1)(b). The court of referees, following a hearing on February 17, 1949, maintained the disqualification but terminated the disqualification as of March 7, 1949.

Upon appeal, it was held that "it is unsound, for the purposes of the Act, to attempt to determine in advance what a period of physical incapacity or of non-availability for work will be", a fixed period of disqualification (not exceeding six weeks) having been discarded by legislative amendment in 1946 for this reason.

JURISPRUDENCE: Followed in CUB 930 and referred to in CUB 1220.

Appeal of the insurance officer allowed.

June 18, 1949 (Reversed)

CUB 447

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous—reversed, Insurance Officer—re-examination after decision).

UNEMPLOYED (Contract of service, Employed, Farmers, Holidays—general continuous, Separated from regular employment, Subsidiary).

Sections 27(1)(a) and 29(1)(c) of the Act (1946)

The claimant who had been employed as an automobile assembler from January 1943 to July 15, 1948, when he was laid off on account of a "stock shortage", filed a claim for benefit on July 16, reporting that, apart from his usual occupation, he was engaged in "mixed farming".

The claimant was disqualified for an indefinite period from July 16 as not unemployed under Section 27(1)(a) of the Act. It was subsequently noted that the employer had its recognized vacation period from July 26 to August 7 and on the following August 9 re-employed the claimant who, however, again became separated on October 7 on account of a shortage of material, whereupon he filed a renewal claim; the insurance officer concluded however there was no evidence to justify lifting the indefinite disqualification previously imposed. The claimant appealed on October 28 to a court of referees which unanimously removed the disqualification under Section 27(1)(a) of the Act on grounds the claimant was primarily an industrial worker but imposed instead a disqualification under Section 29(1)(c) of the Act, for the recognized vacation period at the company's plant, from July 26 to August 7. The insurance officer appealed on the grounds the claimant was not under contract of service at the commencement of the recognized plant holiday and, in accordance with CUB 62, was not subject to Section 29(1)(c); the insurance officer however did not dispute that the farming operations carried on by the claimant did not constitute self-employment under Section 27(1)(a).

Upon appeal, it was held that the nature of the claimant's separation from work is the determining factor in the application of Section 29(1)(c), which did not apply if the claimant's separation could be fairly considered not merely as a suspension but as final which was the present case where the claimant had been separated for ten days and apparently had not received any assurance of being re-employed on any definite date.

JURISPRUDENCE: CUB 62* applied.

Applied in CUB 1128.

Appeal of the insurance officer allowed.

June 22, 1949 (Reversed)

CUB 453

(French)

UNEMPLOYED (Contract of service, Engaged on own account, Off-season unemployment, Usual remuneration).

Section 27(1)(a) of the Act (1946)

A 19-year-old single claimant applied for benefit on December 4, 1948, stating he had been laid off, due to cessation of operations for the winter months, from his employment since July 1948 as a travelling sales-

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man for an importer. The employer reported that the claimant was still in his employ as a salesman on a commission basis, although he had been withdrawn from the road for the period of December 3, 1948 to January 7, 1949, because of business slackness, and that he was receiving \$20.00 a week as an advance against future commission even though he did not have to attend at the office or perform any work.

The claimant was disqualified as not unemployed under Section 27(1) (a). The court of referees unanimously removed the disqualification.

Upon appeal, it was held that the claimant's contract of service was not terminated, even temporarily, during the slack period and there was nothing to prevent the claimant from again becoming actively engaged as his employer saw fit and accordingly that he was not unemployed.

JURISPRUDENCE: Followed in CUB 1041.

Appeal of the insurance office allowed.

July 20, 1949 (Affirmed)

CUB 457
(French)

SUITABLE EMPLOYMENT (Change from usual wage rate, Prevailing conditions).

VOLUNTARY LEAVING (Change in income, Grievances raised with employer, Haste, Just cause not shown, Prospects of other employment not investigated beforehand, Suitability of employment as reason, Union relationships and rules).

Section 41(1) of the Act (1946)

A 32-year-old claimant who had been employed seven weeks as a welder by a Montreal plumbing firm, applied for benefit on February 8, 1949 stating he had voluntarily left because his employer was only paying him \$1.15 an hour when the union rate was \$1.55 an hour, although, when he gave his notice, the employer offered him an increase of 10c an hour for inside work and whatever rate was prevalent for outside work.

The claimant was disqualified for a period of six weeks under Section 41(1) of the Act. The claimant and his union business agent gave evidence at the hearing of the court of referees that the minimum rate of pay under the legislation in force for both inside and outside work was \$1.40 an hour and that the joint committee was presently making a claim for the difference in wages. The court of referees unanimously affirmed the disqualification.

Upon appeal, it was held that, as pointed out by the court of referees, "the claimant should have remained in his employment and used the means provided by the law to have his grievance rectified instead of leaving the employ of the company when he had no prospect of work whatsoever."

JURISPRUDENCE: Applied in CUB 689q. and referred to in CUB 1532.

Appeal of the claimant's union dismissed.

July 21, 1949 (Reversed)

CUB 459

SUITABLE EMPLOYMENT (Availability—disqualification only for refusal, Change from usual conditions—part-time—wages, Domestic circumstances, Duration of unemployment—long, Good cause not shown, Married women, Prospects of other work, Reasonable interval, Voluntarily left last previous employment—subjective reasons—for same reasons as present offer).

VOLUNTARY LEAVING (Suitability of employment as reason—part-time).

Section 40(1)(a) of the Act (1946)

A 20-year-old married claimant who had been employed as a mail order clerk in a department store at \$22.00 a week for four years until she left to get married on November 22, 1947, applied for benefit a year later, on November 26, 1948, and refused, three months later, on February 18, 1949, an offer of part-time employment as a telephone and sales clerk in another departmental store at the prevailing rate of pay of 55¢ an hour, four hours a day in a five-day week. The claimant's refusal was on the grounds she preferred personal shopping and mail order work.

The claimant was disqualified for six weeks under Section 40(1)(a) and appealed, stating further that part-time work did not provide sufficient emuneration to hire someone for the care of the child. A majority of the court of referees removed the disqualification.

Upon appeal, it was held that while the rate of pay unquestionably was one of the guiding factors with respect to the suitability of an offer of employment, the fact that such employment is only part-time resulting in inadequate weekly earnings does not of itself necessarily render the employment unsuitable. It was further held that cases of refusal of suitable employment were subject *mutatis mutandis* to the principle established in cases of voluntary leaving part-time employment: "it is desirable in a general sense and in the interest of all concerned that, where a claimant has the opportunity of being partially employed, he should remain in that employment in the hope in the meantime of finding other or additional work, rather than to become totally unemployed".

JURISPRUDENCE: Followed in CUB 855q. and applied in CUB 1113.

Appeal of the insurance officer allowed.

July 21, 1949 (Affirmed)

CUB 461

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—credibility—finding of fact, Evidence: weight of, Insurance officer—general, Jurisdiction of adjudicating authority—aspect raised by adjudication).

AVAILABILITY (Efforts to find work, Engaged on own account, Intention of claimant, Prospects of employment, Restricted as to duration and seasons, Retired or separated from regular employment, Voluntarily left—ignored by insurance officer).

UNEMPLOYED (Availability for full-time work despite employment, Engaged on own account, Full-time work, Off-season unemployment, Separated from regular employment, Subsidiary, Voluntarily left previous).

Section 27(1)(a) of the Act (1946)

A 36-year-old married claimant who had been employed by an automobile dealer at \$50.00 a week from January until April 17, 1948, when he voluntarily left to start his own business and who had been engaged

from May 1 to October 17, 1948 in self-employment as the owner of a summer resort, applied for benefit on October 18 stating that as the tourist season was over, he was now unemployed, adding that his camp had been under construction all summer with very little actual business.

The claimant was disqualified as not unemployed within the meaning of Section 27(1)(a) of the Act. In appeal, the court of referees reported that since November 15 he had been employed as manager of a bowling alley and furthermore he received no revenue from his business during the winter months. The court of referees unanimously removed the disqualification.

Upon appeal, it was held that "a case which involves alternate occupations, one of which is self-employment in a seasonal enterprise of a purely commercial nature, can be viewed in a different light than the case of a claimant whose primary occupation is that of a farmer (CUB 264), or of one who is fully engaged on his own account in a commercial undertaking for the whole of the year (CUB 363)" unless the latter gave up his business. The reason is that "a person engaged in business on his own account in a seasonal commercial undertaking (such as summer cabins), confines his operations to a predetermined or fixed period and, to all intents and purposes, has completed those operations at the conclusion of each on-season. During the off-season, his interest in the business becomes merely that of an investment and, for the purposes of the Act, he may be considered as having ceased to be engaged in business on his own account". It was further held however that "in cases such as the present one, the insurance officer, before granting benefit, must be doubly sure of the claimant's availability for work and of the genuineness of his intention in respect to taking employment upon the completion of his on-season."

JURISPRUDENCE: CUBs 264* and 363* distinguished.

Distinguished in CUB 544, applied in CUB 558 and referred to in CUB 821.

Appeal of the insurance officer dismissed.

September 6, 1949 (Reversed)

CUB 468

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—credibility—finding of fact—reversed, Evidence: statements before and after disqualification and after Board of Referees).

UNEMPLOYED (Availability for full-time work despite, Engaged on own account, Off-season unemployment, Subsidiary).

Section 27(1)(a) of the Act (1946)

A 44-year-old claimant who had been employed as a camp cook by a firm of surveyors from May 17 until September 11, 1948 when the camp closed, applied for benefit on November 30, 1948 stating that late in October he had made a down payment on the annual installment purchase of a fully grown ten-acre orchard but at the time was devoting his spare time only to it and was seeking employment.

The claimant was disqualified as having failed to prove he was unemployed under Section 27 of the Act. He contended in appeal that the

*Printed in Selected Decisions (ed. 1950) and not digested to date.

1948 crop had been harvested prior to the purchase and that he would receive no revenue until the 1949 harvest and, finally, that the orchard did not require any attention until April 1949. The court of referees unanimously maintained the disqualification. Leave to appeal was granted on the further statement by the claimant that a man had been hired to work the orchard during the summer and that he himself was available for work at all times, intending to return to camp next summer unless suitable employment was found closer to his home.

Upon appeal, it was held that the claimant had not failed to prove he was unemployed, it appearing from his submission that he had bought the orchard as an investment—the mere fact that the claimant is the owner of a business is not sufficient to warrant a finding that he is not unemployed—that he had no intention of taking an active part in the operation of the fruit farm—the intention of the claimant in cases of this kind being one of guiding factors—that accordingly he had made arrangements to have someone to do the work for him and, finally, that he was looking for work and proposing to resume his previous summer employment.

JURISPRUDENCE: Followed in CUB 482.

Appeal of the claimant allowed.

September 6, 1949 (Reversed)

CUB 469

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision—finding of fact—credibility, Evidence: benefit of doubt).

UNEMPLOYED (Engaged on own account, Off-season unemployment, Proof).

Section 27(1)(a) of the Act (1946)

A 22-year-old claimant applied for benefit on January 8, 1949, stating he had purchased a truck in the previous spring and had been self-employed hauling gravel for the Department of Highways from May until December 1948; on January 26, 1949 he stated further that he still owned his truck which he would operate again as soon as the weather permitted.

The claimant was disqualified as not unemployed within the meaning of Section 27(1)(a) of the Act. A majority of the court of referees maintained the disqualification, the dissent being on the grounds that the claimant could not operate his truck during the winter months owing to heavy snow in the district (London, Ontario).

Upon appeal, it was held that the claimant's trucking business could be classified as seasonal and that the claimant should be given the benefit of doubt as to whether he had wound up his business for the winter months, the evidence in this regard not being sufficiently clear to warrant a definite finding although "the case would have been easier to decide had the claimant given a definite undertaking that he had no intention of using his truck again for business purposes until the commencement of the next on-season".

JURISPRUDENCE: Distinguished in CUBs 544 and 590.

Appeal of the claimant allowed.

September 8, 1949 (Affirmed)

CUB 470

UNEMPLOYED (Availability for full-time work, Engaged on own account, Off-season unemployment, Separated from regular employment, Voluntarily left previous).

Section 27(1)(a) of the Act (1946)

A 30-year-old claimant who stated, on applying for benefit on January 18, 1949, that he had been employed as a mechanic by a garage owner from 1947 until December 4, 1948 when he had left his employment voluntarily, published on January 20 a notice in the local newspaper to the effect that his garage was now open for business and declared on January 28 that he had had six hours' work on January 24 and nothing since, that he intended to seek steady employment in an established garage and that, for the present time, he would carry on in his garage with any work he could get.

The claimant was disqualified for having failed to prove he was unemployed. He appealed to the court of referees on the grounds that he was not making a living with his business and he would give it up until he could obtain more capital. The court of referees unanimously maintained the disqualification but leave to appeal was granted in order to determine whether the principle in CUBs 245, 264 and 363 had been properly applied.

Upon appeal, it was held that the principle in question had been properly applied.

JURISPRUDENCE: CUBs 245*, 264* and 363* applied.

Distinguished in CUB 1214.

Appeal of the claimant dismissed.

September 8, 1949 (Reversed)

CUB 472

AVAILABILITY (Capable of work, Domestic circumstances, Married women, Prospects of employment, Restricted to part-time, Separated from regular employment, Voluntary left—disqualification only as not available).

CAPABLE OF WORK (Availability affected, Separation from employment in this connection, Sickness benefit, Suitability of employment likely to be offered).

Section 27(1)(b) of the Act (1946)

A 28-year-old married claimant, who had been employed as a grocery clerk in Ottawa from September 1946 until January 15, 1949, applied for benefit on January 24, stating she had left on her doctor's advice because the work was too hard, as per later medical certificate to the effect that by reason of "secondary anemia caused by full-day work in addition to her own house work" the claimant was advised to do part-time work only (four hours) preferably in the afternoon. The local office reported that no part-time clerical or sales work which was requested by the claimant until her health improved, was available.

The claimant was disqualified as not available for work. The court of referees removed the disqualification.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

Upon appeal, it was held that "a claimant who has established a pattern of full-time employment and who, for health reasons, 'can only accept part-time work for the time being', was not available for work unless there are, in the area, reasonable opportunities to obtain part-time employment", the evidence in the present case indicating this condition was not met and the claimant's employability accordingly being too limited to meet Act's requirements.

JURISPRUDENCE: Followed in CUB 834.

Appeal of the insurance officer allowed.

September 8, 1949 (Reversed)

CUB 473

AVAILABILITY (Capable of work, Married women, Pregnancy of claimant, Prospects of employment, Restricted as to part-time work, Separated from regular employment, Voluntarily left—delayed claim).

CAPABLE OF WORK (Availability affected, Pregnancy, Separation from employment in this connection, Suitability of employment likely to be offered).

Section 27(1)(b) of the Act (1946)

A 28-year-old married woman, who had been employed as a dicta-phone operator in Toronto on a full-time basis from November 1945 until July 14, 1948, applied for benefit on January 10, 1949, stating she had left her employment due to pregnancy and was now seeking employment for three days a week, a medical certificate being submitted to the effect that she had had a serious hemorrhage the previous October and three days a week should be the maximum amount of work at present. The local office reported that such employment was not ordinarily available.

The claimant was disqualified as not capable of work. The court of referees unanimously removed the disqualification.

Upon appeal, it was held that while the claimant was capable of part-time employment, she was not capable of or available for work within the meaning of the Act, in accord with the principle established in CUB 282 as her employment record indicated she had always worked on a full-time basis, her employability was now substantially reduced to a pattern in which work 'is not ordinarily available' and she had not shown she had any prospects of finding this kind of employment.

JURISPRUDENCE: CUB 282* applied.

Followed in CUB 834.

Appeal of the insurance officer allowed.

September 8, 1949 (Varied)

CUB 474

VOLUNTARY LEAVING (Availability—questionable, Change in residence, Domestic circumstances—temporary, Duration of disqualification, Extenuating circumstances, Just cause not shown, Married women leaving the area).

Section 41(1) of the Act (1946)

A 28-year-old married claimant, who had been employed as a typist from September 7, 1948 to February 26, 1949, applied for benefit on March

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10, stating she had voluntarily left because she and husband had been unable to find suitable living accommodation in Halifax and she had gone to live with her sister in Glace Bay.

The claimant was disqualified for six weeks for voluntary leaving without just cause. The claimant then added that her husband who was a student in pharmacy, was living now with his sister in Halifax. The court of referees unanimously removed the disqualification.

Upon appeal, it was held that the claimant should have endeavoured to obtain separate accommodation under the circumstances rather than throw herself on to the unemployment insurance fund and, furthermore, that it was doubtful the claimant had any intention of seeking employment during her temporary stay in Glace Bay, her availability being doubtful accordingly. In view of the extenuating circumstances however, the claimant's disqualification was reduced to one week.

JURISPRUDENCE: Referred to in CUB 593 re extenuating circumstances.

Appeal of the insurance officer allowed but disqualification reduced to one week.

September 8, 1949 (Affirmed)

CUB 476

ADJUDICATION PROCEEDINGS (Board of Referees: examination of witness, familiarity with local situation, unanimous decision—finding of fact).

AVAILABILITY (Domestic circumstances, Intention of claimant, Married women, Prospects of employment, Restricted to part-time, hours and days).

Section 27(1)(b) of the Act (1946)

A 49-year-old married claimant, who had been employed as a part-time secretary-stenographer (12 noon to 4:00 p.m., 4 days a week) from 1945 to February 26, 1949 when she was laid off because the said employer required a full-time stenographer, applied for benefit on April 7 and a week later, upon local office query, stated that she was only available on the same basis as in the past.

The claimant was disqualified for an indefinite period as not available for work. The claimant stated in appeal that she was not available on Friday and Saturday by reason of household duties although she could work the other four days either from 10:00 a.m. to 3:00 p.m. or 12:00 p.m. to 4:00 or 5:00 p.m. The court of referees unanimously maintained the disqualification in the light of CUBs 24, 180, 177, 220 and 282 mentioned by the insurance officer. Leave to appeal was granted by the Chairman on the question whether the statutory authorities are estopped from disqualifying a claimant under Section 27(1)(b) of the Act because he insists on accepting work of a pattern similar to that which he had previously followed.

Upon appeal, it was held that "the answer to that question depends upon the claimant's length of unemployment, the possibilities of obtaining work of such a pattern in the district and all other circumstances of his case." Furthermore, on the evidence that the claimant had been unemployed for approximately a month and a half when she filed a claim during which she presumably sought without success the kind of employment she

desired and that the insurance officer had made a thorough inquiry as to the claimant's prospects of obtaining such employment and had decided she had so restricted her availability as to be considered not available for work, it was held there was no valid reason to disturb the unanimous decision of the court of referees which had the opportunity of hearing the claimant's evidence in the light of their knowledge of the prevailing conditions of employment in the district.

JURISPRUDENCE: Applied in CUBs 630 and 782.

Appeal of the claimant dismissed.

September 8, 1949 (Reversed)

CUB 477

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—credibility—finding of fact—reversed, Evidence: employment officer opinion, statements before and after disqualification).

AVAILABILITY (Intention of claimant, Married women, Prospects of employment, Restricted as to area and occupation, Suitable employment—joint disqualification, Voluntarily left—disqualification only for voluntary leaving).

SUITABLE EMPLOYMENT (Availability—joint disqualification, Change from usual occupation, Duration of unemployment—long, Good cause not shown, Prospects of other work, Reasonable interval, Voluntary left last previous—subjective reasons—disqualification for same reasons).

Sections 27(1)(b) and 40(1)(a) of the Act (1946)

A 25-year-old married claimant, who had been employed as a dental assistant from September 10, 1945 until August 14, 1948, and had left voluntarily then pursuant to verbal notice of her future intention to separate given at the time of her marriage in February 1948, (upon claim for benefit on October 5, 1948 being accordingly disqualified), refused, on February 21, 1949, an offer of employment as a waitress in a local restaurant on the grounds that this was not her line of work and she had no experience in it. The local office reported that the claimant was ready to accept work in her usual occupation only and there was no such occupation for married women in that town.

The claimant was disqualified for a period of six weeks for her refusal and for an undetermined period as not available for work. The court of referees unanimously removed the disqualifications on the grounds that the difference in the occupations was too great socially and in every other respect.

Upon appeal, it was held that the court of referees had not "attached sufficient importance to such determining factors as the claimant's length of unemployment, her prospect of obtaining work of a kind that the court considers suitable in relation to the degree of her experience and the employability of married women in her home locality" and that as, in accordance with the principle established in CUBs 302, 394 and 407, a reasonable interval, within the meaning of Section 40(3) of the Act, had elapsed, the employment in question was suitable. It was further held to be doubtful that the claimant was available for work at the time of filing her claim in the light of her various statements as well as the comments of the local

office and the very fact of her refusal of suitable employment, it being noted that the claimant, only a few weeks prior, had voluntarily left her employment without definite reasons after having given a verbal separation notice to her employer in February 1948.

JURISPRUDENCE: CUBs 302*, 394* and 407*, applied.

Applied in CUBs 501 and 578q.

Appeal of the insurance officer allowed.

September 8, 1949 (Reversed)

CUB 478

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision—labour dispute).

LABOUR DISPUTE (Termination of disqualification: bona fide employed elsewhere in his usual occupation, regularly engaged in another occupation).

Section 39(1) of the Act (1946)

A 33-year-old single claimant who had lost his employment as an assembler from May 1946 until July 13, 1948 at 82¢ an hour plus bonus with an auto parts manufacturer by reason of a stoppage of work due to a labour dispute at the plant where he was employed, and who had been subsequently employed as a primer on a tobacco farm at \$12.00 a day from August 16 to September 18, 1948, when this temporary work finished, and had been employed further as a construction labourer at 80¢ an hour from September 30 to October 15, 1948, applied for benefit on October 16, 1948.

The claimant was disqualified under Section 39 of the Act. A majority of the court of referees removed the disqualification on the grounds the claimant had been employed elsewhere since the stoppage, the dissent being on the grounds that he had not become regularly employed elsewhere as the two employments were only stop-gap.

Upon appeal, it was held that the question to decide was whether the claimant had become engaged regularly in some other occupation and that the two jobs in question, "by their very nature and in relation to the claimant's employment record, were not such as to give, when taken, a promise of lasting employment. They were, in the Umpire's opinion, temporary substitutes which did not intervene in the chain of causality between the claimant's unemployment and the stoppage of work due to a labour dispute" at his regular employer's. This was borne out by the fact that while employed as a labourer he took steps to protect his rights with his regular employer by paying to the latter a premium on his group insurance and also by the fact that he immediately returned to work there at the conclusion of the strike.

JURISPRUDENCE: Followed in CUB 1247.

Appeal of the insurance officer allowed.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

September 8, 1949 (Reversed)

CUB 480
(French)**CLAIMS MATTERS** (Antedate: good cause for delay not shown—ignorance of rights no excuse while railway suspension investigated).**MISCONDUCT** (Offence: criminal, Relations with supervisors).

A 20-year-old single claimant, who had been employed as a railway clerk from September 1, 1945 to September 1948 and who had applied for benefit on December 9, stating he had been dismissed for cause, which reason the employer confirmed, applied on January 12, 1949 to have his claim antedated to September 21. He gave as the reason for his delay in filing claim, that he had been suspended on September 21 while an investigation was held, that as a result he had been absolved from blame and the company was supposed to pay him as from that time but that he had been advised subsequently that he was "suspended definitely".

His request for antedate was not approved on the grounds he had not shown good cause for delay. The court of referees unanimously removed the disqualification on the grounds that the claimant had had good cause for delay inasmuch as, although he had made an admission of theft to the company's investigators, he had been found not guilty in criminal proceedings and the superintendent, following dismissal of the charge, had had the matter re-investigated and only then decided to dismiss the claimant permanently; as a result the claimant was right, the court found, in contending he was entitled to his salary and should have received it and, consequently he could not be eligible for benefit until the superintendent had rendered his decision.

Upon appeal, it was held that negligence on the part of the claimant or ignorance of the provisions of the Act could not be accepted as a reason for non-compliance as "in accordance with the comments in CUB 138, dealing with the case of a railway employee who had been separated from his work because he was unable to meet the required standards and who had delayed in making his claim for benefit because he had hoped that the railway would reconsider its decision, 'it would have been an easy matter for the claimant to have called at the local office of the Commission and there obtain full information as to his position in regard to his benefit rights'".

JURISPRUDENCE: CUB 138q.* applied.

Followed in CUB 553.

Appeal of the insurance officer allowed.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

September 8, 1949 (Varied)

CUB 483

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—finding of fact—varied, Evidence: benefit of doubt, burden of proof on claimant, enforcement officer finding, statements before disqualification).

UNEMPLOYED (Contract of service, Family enterprise, Off-season employment, Proof, Usual remuneration).

Section 27(1)(a) of the Act (1946)

A single 29-year-old claimant who had been employed as an inspector by the roads department of a large city from December 1947 to March 17, 1948, when he was laid off due to a shortage of work, was allowed benefit, following claim on March 25 until November 10 when the local office suspended payments following an enforcement officer's report. The report was to the effect that from the beginning of July 1948, the claimant's father had started to teach him the insurance appraisal business, in the course of which the claimant helped the father when there was a surplus of work, that is, once or twice a week but often only once every 15 days; the claimant received from \$25.00 to \$40.00 a week for his subsistence, an amount which the claimant was supposed to repay when he would start working again in December.

The claimant was disqualified for an undetermined period of time, starting July 1, 1948 because he had not proved he was unemployed from that date. The court of referees amended the disqualification to start from September 9 only, hesitating, in view of the lack of clear and precise evidence, to maintain the insurance officer's decision and consequently declare the claimant to have obtained benefit by means of false statements.

Upon appeal, it was held that, as per the unanimous finding of the court of referees, the claimant had worked for his father during the period from June to November 1948 but the number of hours a day or days a week could not be determined from the facts in evidence. It was further held, however, that as "it devolved upon the claimant to prove his unemployment on any day for which he claimed benefit, the claimant by failing to disclose to the local office the work he was performing for his father and therefore to specify the days on which he was unlikely to meet the conditions laid down in Section 27(1)(a) of the Act, has so weakened the value of all his declarations for the period in question, that they could no longer be accepted as sufficient proof of his unemployment for any part of that period."

JURISPRUDENCE: Distinguished in CUB 1079, followed in CUB 1116 and applied in CUB 1117q.

Appeal of the insurance officer allowed.

September 13, 1949 (Reversed)

CUB 486

ADJUDICATION PROCEEDINGS (Estoppel, Evidence: employment officer report, Interpretation, Jurisdiction of adjudicating authority: aspect raised by adjudication, coverage).

AVAILABILITY (Domestic circumstances, Efforts to find work, Married women, Prospects of employment, Restricted to part-time).

Section 27(1)(b) of the Act (1946)

A 32-year-old married claimant who had been employed as a part-time hotel waitress (7:00 p.m. to 11:00 p.m.) in the small town where she lived (population 3,013), from August 16 to December 11, 1948 when she was laid off, refused on March 15, 1949 an offer of full-time employment as a waitress on the grounds that her household duties prevented her from working full-time. The local office reported it did not have any orders for evening work for waitresses and had not had any for a long time.

The claimant was disqualified for as long as she restricted her hours of work so as to be not available for work. The court of referees unanimously removed the disqualification on the grounds that the Commission was estopped from denying benefit to a claimant who restricted her availability to part-time work, because it had accepted her contributions in respect of part-time employment.

Upon appeal, it was held that the claimant's right to insist upon work only of a pattern similar to that previously followed depended "upon the length of unemployment, the possibilities of obtaining work of such a pattern in the district and all the other circumstances of the case" and that "while it (is) the duty of the local office to endeavour to find such employment, nevertheless, if with the passage of time no such employment (can) be found, (the claimant) should be ready to adjust his domestic or personal affairs in order to meet the exigencies of the labour field", it being noted that neither the claimant nor the local office had been successful in finding such employment over a period of three months.

JURISPRUDENCE: Applied in CUBs 630, 782q., 806 and 898q. and distinguished in CUBs 791q. and 1587.

Appeal of the insurance officer allowed.

October 3, 1949 (Varied)

CUB 488

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—varied, Commission's responsibility re adjudication and claims procedures, Disqualification—extenuating circumstances).

SUITABLE EMPLOYMENT (Change from usual area, occupation, wages, Disqualification duration, Duration of unemployment—long, Good cause not shown, Offer, Prevailing conditions, Voluntarily left previous employment—subjective reasons).

Section 40(1)(a) of the Act (1946)

A 33-year-old single woman who had been employed as a grocery clerk in Montmagny at \$15.38 a week, from 1940 to June 12, 1948, when she voluntarily left because the condition of her legs did not permit her to work standing up, and who had applied for benefit on August 23, registering

as an apprentice seamstress, refused on August 30 an offer of employment as such with a corset manufacturer in Quebec city at 30¢ an hour, the minimum prevailing rate being 25¢. She gave as her reason that the wages were not high enough to cover her expenses.

The claimant was disqualified six weeks for her refusal. She appealed on the grounds that the employment officer at the time of the offer had told her the salary would amount to \$11.00 a week whereas it would have amounted to \$13.00, a rate which she would have accepted. The court of referees unanimously maintained the disqualification on the grounds the claimant should have gone to see the employer and inquired into the employment offered.

Upon appeal, it was held that the decision of the court of referees was correct but that extenuating circumstances in the case justified the reduction of the period of disqualification to one day, it being incidentally noted that the number of days' benefit paid to the claimant should not be held for or against him as benefit is provided under the Act as a matter of right.

JURISPRUDENCE: Applied in CUB 527 and referred to in CUB 593.

Appeal of the claimant dismissed but disqualification reduced to one day.

October 3, 1949 (Reversed)

CUB 490

VOLUNTARY LEAVING (Change in income, Grievances raised with employer, Haste, Just cause shown, Prospects of other employment not investigated beforehand, Suitability of employment as reason, Trial period of employment before leaving).

Section 41(1) of the Act (1946)

A 47-year-old married claimant who had been employed as a machine operator by a furniture manufacturer at 60¢ an hour from January 20 to February 23, 1949, applied for benefit, stating he had left his employment voluntarily because the wage was too low and the work was too dirty and adding that he had worked as a carpenter at his two previous employments at the rate of the \$1.30 an hour. The employer reported that the claimant had left because of refusal of an increase in wages.

The claimant was disqualified for six weeks for voluntary leaving without just cause. The claimant appealed, stating that he had not applied for benefit when he first became unemployed on December 17, preferring to seek carpentry work, and that he had found the employment in question on his own initiative. A majority of the court of referees maintained the disqualification.

Upon appeal, it was held that the claimant had given the employment a fair trial and found it unsatisfactory and that the employment would not have been considered suitable within the meaning of the Act had the local office offered it so soon after the claimant's previous separation: "If a claimant can refuse to accept unsuitable employment, then he should be permitted to voluntarily leave it, otherwise he would be penalized for having accepted the employment on the chance that the work would prove suitable or that the conditions would subsequently improve, thereby having an adverse effect on his incentive to accept, on trial, employment where in his opinion, doubtful conditions of work exist."

JURISPRUDENCE: Distinguished in CUBs 707 and 781q.

Appeal of the claimant allowed.

October 3, 1949 (Reversed)

CUB 494

ADJUDICATION PROCEEDINGS (Commission's responsibility re adjudication procedures).

SUITABLE EMPLOYMENT (Change from usual area, wage rate, Domestic circumstances, Duration of unemployment—brief, Good Cause shown, Prevailing conditions, Proof, Prospects of other work, Reasonable interval).

Section 40(1)(a) of the Act (1946)

A 42-year old married man who resided four miles from Sault Ste. Marie with his wife and four children and who had been employed as a carpenter in that city from November 8 to December 31, 1948 at \$1.45 an hour, refused an offer of employment on February 15, 1949, as a carpenter with a contractor in Thessalon, Ont., 72 miles away, on the grounds the rate of pay of \$1.10 an hour, although the prevailing one in that district, was too low and he would have been required to leave his home (the hours of work being 9 a day and 54 a week).

The claimant was disqualified a period of six weeks for refusal without good cause. A majority of the court of referees maintained the disqualification.

Upon appeal, it was held that the claimant had good cause within the meaning of the Act for refusing the employment, the claimant having given oral evidence before the Umpire that the distance would have necessitated considerable expenses by way of room and board, and transportation, that as the family home was located in a sparsely populated area his presence was required at night for the safety and welfare of his family, that the work offered was rough carpentry work and, furthermore, required he work at great height under wet and slippery conditions, that the conditions of work were less favourable than those observed by agreement between employers and employees and, finally, that shortly after his refusal of the employment, he had resumed work in Sault Ste. Marie as a carpenter at \$1.45 an hour. The Chief Claim Officer of the Unemployment Insurance Commission had also expressed the opinion that the work was not suitable in view of the short period of unemployment, the claimant's domestic responsibility and the fact he was a finish carpenter and that he should have been given more time to secure work in his usual occupation in or around the city of Sault Ste. Marie, which the claimant evidently did shortly afterwards.

JURISPRUDENCE: Distinguished in CUB 495.

Appeal of the claimant allowed.

October 3, 1949 (Varied)

CUB 495

ADJUDICATION PROCEEDINGS (Commission's responsibility re adjudication procedures, Disqualification—extenuating circumstances).

SUITABLE EMPLOYMENT (Change from usual area, wage rate, Disqualification duration, Domestic circumstances, Duration of unemployment—brief, Good cause shown, Prevailing conditions, Prospects of other work, Reasonable interval).

Section 40(1)(a) of the Act (1946)

A 39-year-old single claimant who resided in Sault Ste. Marie and had been employed there as a carpenter from November 2, 1948 until January 11, 1949 at \$1.37 an hour, refused on February 15, 1949 an offer of employ-

ment as a carpenter in Thessalon, Ont., about 72 miles away, at the prevailing rate of \$1.10 an hour, the hours of work being nine a day and 54 a week. He gave as his reason the low wage rate, the resulting need to leave the city and his fair prospect of resuming his former employment.

The claimant was disqualified a period of six weeks for his refusal and appealed, contending that he could not leave the city where he was supporting his mother and that the employment offered was not comparable to his previous employment. A majority of the court of referees maintained the disqualification.

Upon appeal, it was held that the claimant had not shown just cause for his refusal, the evidence at the hearing showing that the claimant's mother lived in another city and the present case being distinguished from CUB 494, in that the claimant could have moved without hardship to Thessalon where good accommodation was to be found. It was held however, that other factors in the case, which in CUB 494 had weighed in favour of that claimant, justified reducing the disqualification in the present case to a period of one week.

JURISPRUDENCE: CUB 494 distinguished.

Referred to in CUB 593.

Appeal of the claimant dismissed but disqualification reduced to one week.

October 6, 1949 (Affirmed)

CUB 498

VOLUNTARY LEAVING (Grievances raised with employer, Just cause not shown, Prospects of other employment not investigated beforehand, Suitability of employment as reason, Working conditions—wages).

Section 41(1) of the Act (1946)

A 52-year-old claimant who had been employed as a checker by a firm of cleaner and dyer at 45¢ an hour since January 10, 1949, applied for benefit on July 4, stating she voluntarily left on June 18 because the wages were insufficient and she had not received the increase in wages promised her.

The claimant was disqualified a period of six weeks for refusal without just cause. A majority of the court of referees maintained the disqualification, the dissent being on the grounds that the minimum rate provided by provincial legislation was 50¢ an hour and the employer's refusal constituted a breach of contract of service. Subsequently a regional investigation disclosed that the employer, in conformity with the legislation, had obtained a permit entitling him to hire trainees at less than the minimum wage for a maximum period of six months.

Upon appeal, it was held that the claimant should have had the assurance of other work before leaving her employment, the claimant's contention that she could not seek another job while employed in this employment, not being consistent with her working hours which were from 6:00 p.m. to 12 midnight.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant dismissed.

October 7, 1949 (Revised)

CUB 499

CLAIMS MATTERS (Antedate: good cause for delay—ignorance of benefit rights in Newfoundland in 1949).

A 17-year-old claimant, who had been previously employed in Corner Brook, Nfld., as a sales clerk from February 18 to April 14, 1949, and had voluntarily left his later employment as a labourer with a contractor in St. John's, Nfld., on May 27, 1949 after two days employment because he found the work too hard, applied for benefit on June 14 and requested his claim be antedated to May 28, contending the delay was because he had not been aware of his benefit rights.

The application for antedate was refused in the first instance on the grounds the claimant had not shown good cause for his delay. A majority of the court of referees upheld the refusal, the reasoning behind the dissent being that as both Unemployment Assistance and Unemployment Insurance were new to the Island of Newfoundland, it was probable that the claimant had no knowledge of the proper time to apply for unemployment assistance and, furthermore, at the time of separation he was not given his insurance book nor any information with respect to such rights.

Upon appeal, it was held that as both Unemployment Assistance and Unemployment Insurance were new to the Island of Newfoundland, the claimant had some justification for having failed to make his application for benefit at an earlier date and his application for antedate was accordingly allowed.

JURISPRUDENCE: Distinguished in CUB 575 and applied in CUB 904.

Appeal of the claimant allowed.

November 1, 1949 (Varied)

CUB 507

ADJUDICATION PROCEEDINGS (Board of Referees: familiarity with local situation, majority decision—finding of fact, Disqualification—extenuating circumstances).

SUITABLE EMPLOYMENT (Change from usual occupation, Disqualification duration, Duration of unemployment—brief, Good cause not shown, Prospects of other work or return to former, Voluntarily left last previous employment—disqualification imposed).

Section 40 (1) of the Act (1946)

A 19-year-old single claimant, who had been employed as a millhand (kiln stacker from 1944 to May 4, 1949, when he separated on the grounds he had had to move his family to a small town because of local floods and a housing shortage, for which he was disqualified six weeks under section 41 (1) of the Act, refused an offer on June 23, 1949 of seasonable employment as a bushman in a logging firm on the grounds that he had no experience as a bushman.

The claimant was disqualified for a period of six weeks by reason of the refusal and the majority of the court maintained the disqualification.

Upon appeal, it was held that there was no reason to interfere with the findings of the court of referees which had gone fully into all the facts of the case and knew the local conditions. It was held, however, that the

period of disqualification should be reduced to three weeks in view of the short period of unemployment, approximately seven weeks, the age of the claimant and the experience and skill he had acquired.

JURISPRUDENCE: Referred to in CUB 593.

Appeal of the claimant dismissed but disqualification reduced to three weeks.

November 1, 1949 (Affirmed)

CUB 510

AVAILABILITY (Disqualification—*indefinite*, Domestic circumstances, Prospects of employment, Restricted as to area and travel, Retired from regular employment, Suitable employment refused—disqualification only as not available).

SUITABLE EMPLOYMENT (Availability—disqualified instead as not available, Change from usual area and occupation, Conditions—travel distance, Domestic circumstances, Duration of unemployment—long, Prospects of other work, Reasonable interval).

Section 27(1)(b) of the Act (1946)

A 65-year-old married man, who had retired on pension on November 13, 1948 from employment as a railway section foreman since 1924, refused an offer on June 28, 1949 of employment as a fireman at a military camp situated 105 miles away, on the grounds he could not leave home because his wife was sick and because he had to care for a large garden he had.

The claimant was disqualified for an undetermined period as not available for work. The court of referees unanimously maintained the disqualification.

Upon appeal, it was held that more than a reasonable period of time, to wit, seven months had been allowed in which to obtain work akin the claimant's usual occupation. It was held further that "as to the claimant's domestic or personal circumstances, consideration is always given to such factors in determining the suitability of an offer of employment away from one's locality. However, those factors are outweighed if one is to consider the claimant's prolonged period of unemployment and the unlikely possibility for him to obtain employment of any reasonable duration" in the hamlet where he lived.

JURISPRUDENCE: Applied in CUB 854.

Appeal of the claimant dismissed.

November 2, 1949 (Reversed)

CUB 514

(French)

ADJUDICATION PROCEEDINGS (Board of Referees; unanimous—credibility—reversed, Evidence—benefit of doubt).

UNEMPLOYED (Availability for full time work despite employment, Contract of service, Family enterprise, Retired from regular employment, Subsidiary, Usual remuneration).

Sections 27(1)(a) and 29(1)(b) of the Act (1946)

A 58-year-old married man who had been employed by a firm of ship-builders as a watchman from 1940 to July 27, 1948, when he was laid off due to a shortage of work, was allowed benefit upon filing claim on July

30, 1948. On October 6, he filed a statement with the local office to the effect that since August 25, his wife had become an agent for a manufacturer of patent medicine, toilet articles, etc., as shown by a letter from the Provincial Revenue Offices and a monthly report from the manufacture, and that he was helping her by delivering the merchandise which she sold; he added however, that he was available at all times. On April 1, 1949, he submitted another statement that he was still helping his wife in selling and delivering the merchandise.

The claimant was disqualified for an undetermined period from October 6, 1948 as not unemployed. The claimant appealed on the grounds he received no remuneration and was available for work. The court of referees unanimously maintained the disqualification because the claimant was soliciting orders as well as making deliveries.

Upon appeal, it was held that "claimants under the Unemployment Insurance Act are not prevented from 'doing little things at home such as light repairs, housekeeping, gardening' or even at 'the homes of members of their family' when it is done as a benevolent gesture. If, however, in order to fill up the gap of their unemployment, they undertake to do these 'little jobs' for remuneration or profit, they then follow an occupation within the meaning of section 29(1) (b) of the Act and are deemed not to be unemployed on any day they are so occupied".

On the basis of the submission of the Commission's representative that the claimant's role appeared to be essentially auxiliary and devoid of the factors that constitute a contract of service, e.g., control of the performance of the work and the payment of remuneration, and in view of the good faith proved by the claimant reporting the details to the local office on his own initiative, the claimant was given the benefit of the doubt with respect to his participation in his wife's business.

JURISPRUDENCE: Distinguished in CUB 915.

Appeal of the claimant allowed.

September 3, 1949 (Varied)

CUB 516

ADJUDICATION PROCEEDINGS (Board of Referees: rehearing at insurance officer's request, unanimous—finding of fact, varied, Disqualification—extenuating circumstances, Evidence: statements before and after disqualification).

VOLUNTARY LEAVING (Duration of disqualification, Extenuating circumstances, Just cause not shown, Suitability of employment as reason, Working conditions).

Section 41(1) of the Act (1946)

A 35-year-old married man, who had been employed by a mining company at a general roustabout from April 7, 1947 to January 31, 1949 at \$225.00 a month, voluntarily left because he was dissatisfied with the working conditions and applied for benefit, registering for work as a civil engineer. The employer reported that he had left because he was unsuited to the type of work available.

The claimant was disqualified for a period of six weeks. He stated in appeal that a substantial raise in salary had been promised him eventually but the job had been given someone else. The court of referees unanimously

maintained the disqualification. The claimant then contended that the employer did not supply any sheets or pillows in the camp where he had lived and the blankets were dirty and had not been washed in years. The insurance officer, in view of the new facts, referred the case back to the board of referees which unanimously re-affirmed its original decision.

Upon appeal, it was held that the case was a factual one which twice came before the court of referees which unanimously maintained the disqualification; it was also noted that the claimant had left only after two years of employment. It was held, however, that the disqualification period should be reduced to three weeks as the mining camp, where the claimant lived, was located at a point distant from places where he could seek employment.

JURISPRUDENCE: Referred to in CUB 593 regarding reduced disqualification.

Appeal of the claimant dismissed but disqualification reduced to three weeks.

December 21, 1949 (Affirmed)

CUB 520

SUITABLE EMPLOYMENT (Change from usual conditions—shift work, Domestic circumstances, Duration of unemployment—long, Good cause not shown, Prospects of other work remote, Reasonable interval).

Section 40(1)(a) of the Act (1946)

A 44 year-old married woman, who had been employed by Toronto University as a housekeeper from September 1947 to April 22, 1949, refused an offer on August 15, 1949, of a permanent employment as a ward aide with a mental institution located 8 miles away from her residence on the grounds that she did not want to work three shifts.

The claimant was disqualified for a period of six weeks for her refusal. The claimant appealed, stating, in addition to no transportation being available (the contrary being reported), that she had no one to mind her children at night and the wages were lower than her previous employment. The majority of the court of referees maintained her disqualification.

Upon appeal, it was held that "employment involving night work is not uncommon and a married woman, claiming benefit under the Act, is expected, after a lapse of such an interval from the date on which she becomes unemployed as in the circumstances of the case is reasonable, to adjust her domestic responsibilities so as to enable her to accept it immediately if it is otherwise suitable and none other is available," it having been noted that the claimant had been unemployed approximately four months and had no prospect of work other than that offered, even though a few weeks later she secured other employment.

JURISPRUDENCE: Applied in CUBs 1113 and 1114q.

Appeal of the claimant dismissed.

December 21, 1949 (Affirmed)**CUB 522****ADJUDICATION PROCEEDINGS** (Board of Referees: claimant present, majority decision—finding of fact, Evidence: burden of proof on claimant).**VOLUNTARY LEAVING** (Duration of disqualification, Extenuating circumstances, Just cause not shown, Suitability of employment as reason).*Section 41(1) of the Act (1946)*

A 33-year-old single claimant, who had been employed as a waiter and short order cook since May 9, 1959 to September 20, 1949, applied for benefit, stating he had left voluntarily because his boss was "dissatisfied with his work and claimed he was paying too much wages". The employer reported the claimant did not want to work any more, although the job was open.

The claimant was disqualified for a period of six weeks. A majority of the court of referees upheld the disqualification on the grounds that the claimant's subsequent allegation that his employer had insulted him with regard to his nationality as a Jew was based on hearsay evidence only. It reduced the disqualification period to three weeks, however, on the grounds that the employer, by failing to pay the claimant his wages for the last few days had in effect used the claimant's moneys to purchase his unemployment insurance contributions which were in arrears. The dissenting opinion was based on the finding that there had been discrimination against the claimant as a Jew.

Upon appeal, it was held there was insufficient evidence to amend the majority finding of the court of referees, although the appeal would have been allowed had there been satisfactory evidence of racial discrimination.

JURISPRUDENCE: Referred to in CUB 593 re reduced disqualification.

Appeal of the claimant dismissed.

December 21, 1949 (Affirmed)**CUB 528***(French)***ADJUDICATION PROCEEDINGS** (Board of Referees: recusation, Evidence: burden of proof on claimant, irrelevant to decision).**LABOUR DISPUTE** (Conditions of employment, Direct interest, Grade or class of workers, Proof, Union membership).*Section 39 of the Act (1946)**Section 16(5) of the Benefit Regulations (1948)*

A 20-year-old single man, who had been employed by the Canadian Johns-Manville Co. Ltd., Asbestos, Que., as electrician since January 20, 1949, lost his employment on February 13 on account of a stoppage of work due to the labour dispute. The labour dispute had arisen over the negotiation of a collective agreement to replace that expiring on January 31, 1949, with the union which was recognized as a sole bargaining agent for all the employees of the plant, except those classified as supervisory and office personnel, in matters concerning wages, working hours and conditions of work. The strike was called at midnight on February 13, 1949, and by the following morning there was a complete stoppage of work affecting 2,300 employees.

The claimant was disqualified under Section 39(1) of the Act and the court of referees unanimously maintained the disqualification even though the claimant contended he was not a member of the union.

Upon appeal, it was held that the burden of proving relief under Section 39(2) lay upon the claimant and that as the transcript of evidence indicated the claimant expected to resume his employment as soon as the strike was over and would benefit from any wage increase granted, he was *ipso facto* directly interested. Furthermore, it was held that the claimant belonged to a grade or class of workers within the meaning of Section 39(2)(b), even though he might have looked upon the job merely as a "fill in" until he could obtain work nearer home and, in fact, did secure work in his trade in Quebec City approximately three months after the strike had commenced, both considerations immaterial to the issue. With respect to the union's contention that the employee representative on the court of referees was not qualified to hear the case in that he was an officer of a rival organization, it was held this fact did not debar him under Section 16(5) of the Benefit Regulations nor did the evidence support the union's further contention that such member of the court "was not interested in seeing justice rendered."

JURISPRUDENCE: Followed in CUB 1521A.

Appeal of the claimant dismissed.

December 23, 1949 (Reversed)

CUB 530

AVAILABILITY (Capable of work, Disqualification duration—generally, Domestic circumstances, Intention of claimant, Pregnancy of claimant, Presumption of non-availability, Proof, Prospects of employment, Restricted as to duration, light work, Voluntarily left—disqualification only as not available).

CAPABLE OF WORK (Availability affected, Pregnancy, Proof, Separation in this connection, Suitability for employment likely to be offered).

Section 27(1)(b) of the Act (1946)

A 36-year-old separated woman who had been employed by a radio manufacturing company as a punch press operator from June 5, 1948 to January 21, 1949, applied for benefit on February 10, 1949, stating she had left voluntarily because the work was too heavy in view of her state of pregnancy. She submitted a medical certificate dated the same day to the effect she was capable of part-time work and another dated February 14 stating she would probably be confined on May 15. The local office reported that the claimant restricted her availability to about four hours a day at the most and the only part-time work then available was in office-cleaning or as a waitress.

The claimant was disqualified indefinitely as not available for work but the court of referees unanimously removed the disqualification on the grounds there was part-time work available.

Upon appeal, it was held that "there can be no doubt that women who are in the claimant's condition are handicapped to a considerable extent in obtaining employment. For instance, it is hardly conceivable that a storekeeper would engage a woman as a sales clerk knowing that she is an expectant mother, firstly on account of her condition, and secondly because she would have to leave her employment within a short period of

time. For the same reasons, she could hardly serve as a waitress. Furthermore, she should be considerate of her health, and of the future of the child that she is carrying. . . . Part-time employment is very scarce and the condition of an expectant mother and the handicaps attached rendered it more difficult to secure."

It was held accordingly that "from the date a woman leaves her employment for health reasons brought about by pregnancy she fails to prove that she is capable of and available for work and cannot do so until six weeks after the birth of her child or until she has recovered to such an extent that she can resume employment. Unless there are special distressed circumstances where the claimant is the breadwinner of the family and reasonable opportunities of part-time work prevail, benefit should not be allowed", it being noted in the present case that the claimant registered for work on February the 10th only even though she had left on January 21st.

JURISPRUDENCE: Applied in CUBs **734**, **1111**, referred to in CUB **620** and followed in CUBs **930q.**, **965q.** and **1513**.

Appeal of the insurance officer allowed.

December 30, 1949 (Varied)

CUB 531
(French)

LABOUR DISPUTE (Extension of labour dispute, Grade or class, Premises, Relief, Termination of disqualification: bona fide employed elsewhere, regularly engaged in another occupation, end of stoppage, Union membership).

Section 39 of the Act (1946)

A 22-year-old single claimant who had been employed as an oiler on board of a steamship from May 19, 1948 until April 19, 1949, applied for benefit on April 22, stating he had lost his employment due to the "Seamen's strike", the employer reporting that the crew of the claimant's ship was on strike.

The labour dispute had arisen in the course of negotiations between the association of Canadian shipping companies, of which the claimant's employer was a member, and the Canadian Seamen's Union for a renewal of the collective agreement due to expire on October 15, 1948, which covered all unlicensed personnel except officers, engineers, electricians and pursers. On March 21, 1949, a "sit-in" strike was called by the union on some of the vessels in the port of Halifax; the ship owners secured court orders to force the seamen off the ships and arranged with another union for new crews, whereupon the Seamen's Union called a general strike affecting all vessels at home or abroad starting at midnight on March 31, 1949. The claimant's steamship was tied up at the port of Quebec on April 20, and the crew members, including the claimant, were forced to leave the ship by court order. The claimant was disqualified under Section 39 of the Act.

On June 17, 1949, he filed a renewal claim, stating that he had definitely left navigation and the Seamen's Union, he was registering for employment in his former trade of printing press operator and was seeking employment as such. The original disqualification was maintained by the insurance officer and by a majority of the court of referees, the dissenting member holding that the claimant was no longer interested in the dispute.

Upon appeal, it was held that a labour dispute was no more between a captain and his crew than it was between each individual company and the crews of its ships and a stoppage of work resulting from such a dispute must therefore be considered as a whole and the sailing of a single ship, for instance, the claimant's, shortly after April 20, had no bearing on the general 'situation'. It was further held that there was on August 18, 1949, such a substantial resumption of work that a termination of the stoppage can be deemed to have taken place on that date, the employers' association having informed the Commission that there was at that time two ships out of a total of 80 still tied up due to the labour dispute.

Finally, as regards the particular claimant, it was held that his status should be considered as of the date he filed his renewal claim for benefit and not the date he lost his employment due to a stoppage of work (BU-662—Case No. 1884/1926): the claimant, who was only 22 years of age, was a qualified pressman and had worked in that trade for at least three years prior to 1948 when he was laid off due to a recession in the trade; on June 17, 1949 he indicated he had severed all ties with the union and navigation generally and in a subsequent letter, that he had found work in his trade in a printing office in Montreal at the beginning of October 1949. It was held further that in order to show that he does not belong to a grade or class of workers within the meaning of Section 39(2) of the Act, a claimant must establish that "the employment he lost on account of the stoppage of work had only been taken by him, outside of his own grade or class, as a temporary measure, that he has no intention of resuming that temporary employment at the conclusion of the stoppage of work but that he definitely intends to return to his regular grade or class", these requirements being met by the claimant on June 17, 1949 when he filed his renewal claim for benefit.

JURISPRUDENCE: Distinguished in CUBs 1059, 1148 and 1385, and applied in CUB 1149A.

Appeal of the claimant allowed in part.

February 1, 1950 (Varied)

CUB 540
(French)

LABOUR DISPUTE (Conditions of work, Direct interest, Extension of labour dispute, Grade or class, Insistence and resistance of parties, Loss of employment, Participating, Premises, Shortage of work, Stoppage of work, Union membership).

Section 39 of the Act (1946)

The claimant, who had been employed as a spinner in the spinning department of the Paton Manufacturing Company, Sherbrooke, Que., from 1944 until August 31, 1948, lost his employment due to a strike which commenced in the weave room department. The 468 employees, of whom 368 were union members, worked in 26 departments, including the weave room which employed 42 weavers and 12 loom fixers, under the collective agreement signed on September 22, 1947 effective for one year which provided for the prompt establishment of a production bonus plan in certain departments. On August 16, 1948, the bonus plan was introduced on a trial basis into the weave room, and all but one of the weavers walked out, resulting in a shortage of material in other departments and the lay

off between August 16 and September 1 of about one-fifth of the employees. On September 1, a picket line was established and all work at the premises ceased.

The claimant and his co-workers were disqualified under Section 39. The court of referees unanimously removed the disqualification for all claimants, except the weavers.

Upon appeal, it was held that the labour dispute had during its initial stage involved only the weavers and the employer but as of August 31, involved all the employees covered by the bargaining agreement, and the question of the bonus plan as a whole, rather than in the weave department only, became on that date part and parcel of the existing conflict. It was further held that all the members of the weave room were directly interested. As regards the other employees, there is no evidence that before September 1, they participated in or financed the labour dispute or belonged to a grade or class of workers some of whom did and as the stoppage of work before that date only concerned the introduction of the plan in the weave room, the other employees could not be considered as having been directly interested or belonging to a grade or class of workers some of whom were.

Finally, it was held that on September 1, their case became the same as that of the employees of the weave room. The partial stoppage of work became total due to the change in character of the labour dispute and all the employees acquired a positive and direct interest as the question of the bonus plan became the main feature of the labour dispute.

JURISPRUDENCE: Distinguished in CUB 1035 and followed in CUB 1521A.

Appeal of the insurance officer allowed in part.

March 17, 1950 (Affirmed)

CUB 549

ADJUDICATION PROCEEDINGS (Jurisdiction of adjudicating authority re legislation and policy).

UNEMPLOYED (Holidays—general continuous, Usual remuneration).

Sections 27(1)(a) and 29(1)(c) of the Act (1946)

A claimant who had been employed as a labourer by a firm of equipment manufacturers since 1946, applied for benefit on July 22, 1949 stating he had been laid off the previous day by reason of lack of work. The local office reported that the firm was on holidays from July 25 to August 6 inclusive.

The claimant was disqualified as deemed not to be unemployed during that period. The claimant appealed on the grounds that since he had been employed less than five years he was entitled only to one week's vacation and the second week as a lay-off while the plant was closed. A majority of the court of referees maintained the disqualification.

Upon appeal, it was held that inasmuch as the previous year the plant had closed for a two-week holiday, finding it impossible to operate with only those employees who were entitled to one week's holiday only, and furthermore, as the employer had notified his employees, as early as February 1, 1949, of the dates that summer for the general plant holiday of two weeks without any objection from the union or any suggestion at the time that it would be a shut-down for lack of work, it was reasonable

to conclude that the two-weeks holiday was "a certain, definite and recurrent incident of employment" and therefore a "recognized holiday". It was held further, in accordance with CUBs 199 and 310, that no distinction of class could be drawn between the workers who receive pay during a vacation period and those who do not. Finally, as regards the union's suggestion that the Act, in keeping with the development in industrial relations, should provide benefit to claimants who do not receive pay during a plant holiday, it was held that this was a matter of policy beyond the jurisdiction of the Umpire and only to be dealt with by the authority competent to bring about amending legislation.

JURISPRUDENCE: CUBs 199* and 310* followed.

Followed in CUB 654.

Appeal of the claimant's union dismissed.

April 3, 1950 (Affirmed)

CUB 552

ADJUDICATION PROCEEDINGS (Evidence: enforcement officer finding, statements before disqualification and after Board of Referees, Insurance Officer—re-examination after decision).

AVAILABILITY (Disqualification duration—indefinite, Domestic circumstances, Intention of claimant, Proof, Prospects of employment, Restricted as to area and occupation, Retired from regular employment).

Section 27(1)(b) of the Act (1946)

A 65-year-old married claimant who resided approximately one mile from a summer resort town and had been retired on pension from his employment as a railway section foreman from May 1913 to October 3, 1949 at \$8.11 a day, applied for benefit on October 15 and then wrote to the local office on October 28, stating he did not intend to taxi or walk the 14 miles for the purpose of reporting to the local office. He then went on to say that he was willing to work at his own work at the same wages and to report to the local office on the 15th of each month so long as he was entitled to unemployment insurance benefit. The enforcement officer sent by the local office, reported that the claimant had started to erect a tourist resort, at the present time had three single cabins and one double in addition to his own premises which included a small grocery store, and according to his record the last rental was on September 27, following which the cabins were closed and the grocery store sold out; furthermore, the claimant's wife could not look after the resort as she was an invalid.

The claimant was disqualified for an indefinite period because he had so restricted his sphere of employment as to render him not available for work. The court of referees unanimously maintained the disqualification, even though the claimant amended at the hearing his original restriction of availability to his own work to include any other work, because he emphasized he would not leave the immediate vicinity of his home to accept employment in neighbouring towns. Leave to appeal to the Umpire was allowed in view of the claimant's allegation of false statements and of unusual hardship.

In hearing before the Umpire the claimant explained his regret for having made statements restricting his availability, admitting that he had

*Printed in Selected Decisions (ed. 1950) and not digested to date.

been in a fit of temper, and went on to point out that the cabin business was for the summer season only after which he was available for work; he then stated that he was willing to accept employment during the off-season provided it was reasonably close to where he lived and he could return home each night. On the basis of representations from the Chief Claims Officer of the Commission to the effect that, at the time of the hearing by the court of referees, two months had not elapsed since the claimant's retirement and it might very well be that following the court's decision in the light of the claimant's changed attitude, he could have been found to be available for work, the Umpire agreed with his suggestion that the claimant's case should be reviewed accordingly by the local authorities.

JURISPRUDENCE: Distinguished in CUB 712.

Appeal of the claimant dismissed but review recommended.

April 6, 1950 (Affirmed)

CUB 561

AVAILABILITY (Domestic circumstances, Prospects of employment, Restricted as to area and occupation, Voluntarily left—delayed claim).

Section 27(1)(b) of the Act (1946)

A 22-year-old married woman who had been employed as a bank teller, from 1943 to October 18, 1947 in Neepawa, Manitoba and then until April 30, 1949 in a suburb of Greater Winnipeg, applied for benefit on August 31, 1949, stating she had voluntarily left to accompany her husband who was transferred to Neepawa. On October 1, 1949 the claimant stated, upon the local office query, that she was not willing to accept employment in another town or district even in her regular and registered occupation nor employment in her home town in some other occupation.

The claimant was disqualified as not available for work and the court of referees unanimously maintained the disqualification.

Upon appeal, it was held that the claimant was not entitled to benefit when due to her self-imposed restricted availability, there was little or no chance of her obtaining work within a reasonable period of time, it being noted that even four months later, on February 5, 1950, she had not been successful in obtaining work in Neepawa.

JURISPRUDENCE: Applied in CUB 646q.

Appeal of the claimant dismissed.

May 1, 1950 (Affirmed)

CUB 562

ADJUDICATION PROCEEDINGS (Disqualification—extenuating circumstances).

VOLUNTARY LEAVING (Duration of disqualification, Extenuating circumstances, Just cause not shown, Prospects of other employment not investigated beforehand).

Section 41(1) of the Act (1946)

A 37-year-old married claimant stated he had worked as a truck driver for a general contractor from November 3 to November 18, 1949 when he left voluntarily on account of misunderstanding with the contractor and his office assistant.

The claimant was disqualified for a period of three weeks and the court of referees unanimously maintained the disqualification, noting that the claimant's belligerent attitude was stronger evidence than his actual testimony, of his own responsibility for the separation.

Upon appeal, it was held that the claimant should have shown more cooperation and remained in employment, particularly as he had no other prospect of work, it being also pointed out that he had been disqualified for three weeks rather than the usual six weeks provided for cases of voluntary leaving without just cause.

JURISPRUDENCE: Referred to in CUB 593 re reduced disqualification.

Appeal of the claimant dismissed.

May 1, 1950 (Affirmed)

CUB 564

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—credibility, Commission's responsibility re claims procedures, Evidence: employment history, employment officer opinion).

AVAILABILITY (Disqualification duration—shortened, Domestic circumstances, Intention of claimant, Married women, Prospects of employment, Restricted as to part-time, Suitable employment refused—disqualification only as not available).

Section 27(1)(b) of the Act (1946)

A 24-year-old claimant who had been released on April 9, 1949 from employment since April 26, 1943 with a meat-packing company as a bacon wrapper at 83½ cents, because she got married, had refused on April 22, when she claimed benefit, an offer of permanent employment as a sales clerk in a nut shop at \$18.00 a week for a 44-hour week, stating: "Not wanting night work. Part time in afternoon". Although she was nevertheless allowed benefit, she refused on June 25, 1949, an offer of permanent employment as a sales clerk at \$18.00 to \$20.00 a week for a 44-hour week, the prevailing rate in the district, stating that she was not able to take full-time work and could work afternoons.

The claimant was disqualified for an indefinite period from June 26 as not available for work. The court of referees unanimously maintained the disqualification. On July 18 the claimant wrote to the local office advising that she was now willing to accept full-time work as a packer in a wholesale business—biscuits, candy, etc., as a result of which the claimant's indefinite disqualification was terminated by the insurance officer as of that date.

On July 21, the claimant requested a re-hearing on the grounds that she had only restricted herself to part-time work when she had been told by the local office she could not hope to earn more than 50% of her former wages in employment other than meat-packing which did not employ married women. The court of referees reheard the case and unanimously maintained the disqualification. The claimant's union appealed, contending among others, that the local office employment officer had erred in refusing to register the claimant as a packinghouse worker simply because meat-packing plants did not employ married women.

Upon appeal, it was held that there was no alternative but to agree with the unanimous decision of the court of referees on the basis of the facts established in evidence, the claimant having repeatedly restricted her availability to only part-time work despite her record of full-time employ-

ment and benefit had been allowed the claimant despite this until such time as it was certain that there was little or no prospects of such part-time employment. It was further held that while it is the employment officer's duty to try to find employment for a claimant in the latter's regular occupation or as close to it as possible, he could refer a claimant to employment other than such usual occupation after a reasonable interval of time had elapsed since the claimant had become unemployed, provided it was employment at the prevailing rate and conditions.

JURISPRUDENCE: Referred to in CUB 1552.

Appeal of the claimant's union dismissed.

May 1, 1950 (Varied)

CUB 566

VOLUNTARY LEAVING (Change of residence, Domestic circumstances—temporary, Duration of disqualification, Extenuating circumstances, Just cause not shown, Prospect of work not investigated beforehand).

Section 41(1) of the Act (1946)

A 22-year-old single person who had been employed in a Regina hotel as a bellhop from August 19 to October 31, 1949, applied for benefit in Vancouver on November 12, stating he had left voluntarily for the purpose of returning to that city.

The claimant was disqualified for a period of six weeks. The claimant appealed on the grounds that he had only gone back to Regina on August 13 because of his mother's illness and after her death had stayed at his father's request to keep him company, following the mother's death, until a married sister came to live with the father. The court of referees unanimously removed disqualification as a result.

Upon appeal, it was held that, despite the commendatory motives of the claimant, the principle to be applied was that laid down in CUB 296 to the effect that regardless of good personal reasons, a claimant is not justified in voluntarily leaving what is suitable employment when he has no definite prospects of getting work in the place to which he goes. The court of referees' sympathetic view was supported however to the extent of the period of disqualification being reduced to three weeks.

JURISPRUDENCE: CUB 296q.* applied.

Referred to in CUB 593 re reduced disqualification period.

Appeal of the insurance officer allowed but disqualification reduced to three weeks.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

May 1, 1950 (Affirmed)

CUB 568

ADJUDICATION PROCEEDINGS (Interpretation).**AVAILABILITY (Domestic circumstances, Prospects of work, Restricted as to area, Suitable employment refused—joint disqualification).****SUITABLE EMPLOYMENT (Availability—joint disqualification, Change from usual area, Domestic circumstances, Duration of unemployment—long, Good cause not shown, Married women).***Sections 27(1)(b) and 40(1)(a) of the Act (1946)*

A 24-year-old married claimant who had worked as a machine operator in St. Catharines, Ontario for eight years until she was laid off for lack of work on February 15, 1949, drew benefit thereafter and still after filing a postal renewal claim on April 19, 1949, stating she had moved with her husband who found temporary employment in the small hamlet of Holtyre, Ont., situated 58 miles from Cochrane and 63 miles from Timmins. On October 11, 1949, the claimant refused an offer of employment as a bake shop helper with a large firm in Toronto, some 400 miles from her home.

The claimant was disqualified for a period of six weeks for her refusal and as not available until she could prove otherwise. The court of referees maintained the first disqualification in the majority and the second unanimously.

Upon appeal, it was held that in accordance with the well established principle, a broader interpretation may be allowed as to the suitability of employment offered and as to a claimant's availability in a case where a married woman is the family bread-winner but, as stated in CUB 437, a married woman, unless there are special circumstances, must be ready to take work on the same conditions as a single woman. The claimant in the present case had gone to reside a considerable distance from where any suitable employment could be found for her, had been unemployed eight months and had made clear she had no intention of taking employment at any distant point from her husband's place of residence.

JURISPRUDENCE: CUB 437 applied.

Applied in CUB 797q., and distinguished in CUB 1692.

Appeal of the claimant dismissed.

May 1, 1950 (Affirmed)

CUB 569

MISCONDUCT (Offences—criminal and industrial, Theft).*Section 41(1) of the Act (1946)*

A 42-year-old claimant who had been working as a labourer in an ordnance depot of the Department of National Defence since July 4, 1949, was dismissed on August 1 because he had been convicted, in the local courts, of theft.

The claimant was disqualified for five weeks for having lost his employment through his own misconduct. The employer reported there was a large amount of valuable material stored in the depot and a high degree of honesty was expected among employees. The court of referees unani-

mously maintained the disqualification but leave to appeal was granted on the grounds that the question might have been one of unsuitability rather than of industrial misconduct.

Upon appeal, it was held that although the claimant's offence was not connected with his employment and occurred outside his working hours, "it was of such a nature that it rendered him no longer suitable to his employer who required a maximum of integrity from his employees in view of the large amount of valuable material stored in the premises". There was noted BU 123, involving a similar case and the same conclusion.

JURISPRUDENCE: BU 123 referred to.

Distinguished in CUB 1044.

Appeal of the claimant dismissed.

May 2, 1950 (Varied)

CUB 570

LABOUR DISPUTE (Attributable to L.D., Existence of L.D., Incidents characteristic of L.D., Insistence and resistance of parties, Merits irrelevant, Parties to the dispute, Premises, Shortage of work, Stoppage of work, Sympathetic lock-out, Union membership).

Section 39 of the Act (1946)

The two claimants were among ten journeymen and two apprentices who lost their employment in the lithographing department of Mortimer Limited, a printing firm in Ottawa, Ontario, on June 30, 1949 under the following circumstances. The Canadian Lithographers Association, of which the claimants' employer was a member, and the Amalgamated Lithographers of America, which had an Ottawa local, were bound by a collective agreement covering several provinces, including Ontario, for the period of a year terminating on December 31st, 1948 upon notice in the month of October and otherwise being renewed. Two negotiation meetings before December 1948 had been unsuccessful whereupon the matter was referred to a provincial conciliation board. The latter's report was accepted only by the employers' association which had then warned the union that any strike by a local would bring about a general closing. Following a local strike in Toronto, operations ceased in 17 plants in Toronto, 4 in London, 2 in Hamilton and one in Ottawa. In Ottawa, the lock-out occurred on June 30, 1949 at 12:00 noon, as a result of the plant superintendent delivering to the president of the union local a notice that the lithographic department would be closed until further notice. On August 19, 1949 the company sent out to its lithographers the following letter: "As explained to (the president of the local union) Saturday morning, each day that this strike persists increases the likelihood that this company will close its lithographing operations permanently. Please, therefore, consider yourself free to seek work elsewhere. The company will not likely have work for you when the strike is over".

The claimants were disqualified under Section 39 of the Act from July 5, 1949 for as long as the stoppage of work continued. The two courts of referees, one sitting in Ottawa and the other in Hull, unanimously affirmed the disqualifications but the latter terminated it as of August 19 when the claimant appeared to have been dismissed.

Upon appeal, it was held that there was on June 30th and had been for some months prior, a labour dispute between the employer's association

and the claimants' union, and further, that the lock-out on that date had created a stoppage of work within the meaning of Section 39 of the Act, which continued until the early part of December 1949 when a settlement providing for improved conditions of work was reached and all but 2 of the 12 employees in the lithographic department in the Ottawa firm were taken back. There was no basis at any time for holding the Ottawa local to have disassociated itself from the parent union which had signed the previous collective agreement on behalf of all locals and also since October 1948, had carried on the negotiations which led to the Toronto strike, the Ottawa lock-out and finally the over-all settlement.

Regarding the notice of lock-out on June 30 and the notice of "dismissal" on August 19, it was held that "it is a necessary feature of a stoppage of work caused by a labour dispute that engagements are terminated and the mere fact that the initiative comes from the employer does not render the matter beyond the concept of a labour dispute if his action is taken in consequence of unwillingness on the part of the workmen to agree to his demands or proposed terms of employment . . . the separation was only a subterfuge which is not infrequently used in a dispute of this nature." Furthermore, the extract from letters written in early August by the head of the firm to the effect that the lithographing process was being gradually abandoned in favour of another process, was not conclusive evidence that such change-over was the underlying reason for the separation on June 30. Also, as "the Umpire (does not have) to deal with the merit of the strategy used by the parties in a labour dispute" the fact that the Halifax plant remained open did not alter the main issue, the stoppage of work in Ottawa being purely a matter of fact.

Finally, it was held that the claimants were directly interested in the dispute inasmuch as their conditions of work stood to be affected by its outcome.

JURISPRUDENCE: Followed in CUBs 571, 944, **1151** and 1533, referred to in CUB **1147** and applied in CUB **1514**.

Appeal of the claimants' union dismissed.

Appeal of the insurance officer allowed.

May 3, 1950 (Reversed)

CUB 572

SUITABLE EMPLOYMENT (Change from usual area, Domestic circumstances, Duration of unemployment—long, Good cause not shown, Married women, Prospects of work, Voluntarily left last previous employment: subjective reasons, delayed claim for 6 weeks, for same reasons as present offer).

Section 40(1)(a) of the Act (1946)

A 21-year-old claimant who had been employed in Winnipeg by a printer in the inspection of race tickets, from April 1946 to August 1, 1949 when she voluntarily left to get married and follow her husband who was stationed in Rivers, Manitoba, and who after taking up residence in Brandon, Manitoba, applied for benefit on September 13, refused on December 15 an offer of permanent employment as a clerk in the Shilo Military Camp, situated 20 miles away from Brandon, free daily transportation being provided and room and board being available at Shilo for \$36.00 a month. The claimant contended that she would have had to board in Shilo and her home was in Brandon.

The claimant was disqualified for six weeks for her refusal. The court of referees removed the disqualification on the grounds it would not be fair with the husband working (and living) in Rivers, to cause a further break-up of the home particularly as it was in a city where normally there is a reasonable market.

Upon appeal, it was held that there was no reason for the claimant's family life to be disrupted to the extent presumed by the court of referees and furthermore that the claimant could not expect after several months of unemployment to confine her availability for work to Brandon or Rivers where the prospects were obviously not good and when there were suitable opportunities at Camp Shilo. As stated in previous decisions dealing with similar cases, it was held that married women, unless there are special circumstances, must be prepared to take employment on the same condition as a single woman.

JURISPRUDENCE: Referred to in CUB 935.

Appeal of the insurance officer allowed.

May 5, 1950 (Affirmed)

CUB 574

AVAILABILITY (Circumstances deliberately created, Domestic circumstances, Married women, Prospects of employment, Restricted as to area, duration, occupation, travel, wages, Suitable employment refused—disqualification only as not available, Voluntarily left—ignored by insurance officer).

Section 27(1)(b) of the Act (1946)

A 29-year-old woman who had been employed by an insurance company in Ottawa from 1940 to December 23, 1949, when she voluntarily left to live with her husband on a farm, located four miles from Fitzroy Harbour and 30 miles from Ottawa, owned by her husband whom she had married in November 1949, applied for benefit on December 29, 1949, registering as a stenographer and typist. The same day, she refused an offer of employment with a firm of woodworkers in Arnprior, 12 miles from her home, on the grounds neither the duties nor the compensation were commensurate with her previous job and training, and secondly, she neglected to avail herself fully of the opportunity of an offer of employment with an insurance broker in the same town, stating in both cases that she was not interested in permanent employment.

The claimant was disqualified as not available for work until she could furnish proof otherwise. The court of referees, by a majority, maintained the disqualification.

Upon appeal, it was held that "it is not the intent of the Act to provide benefit to married women who voluntarily leave their employment in cities to reside in small towns or villages, from which they have no intention to move or commute and which offer them very little opportunity of employment", the claimant having stated upon questioning that she would not accept work either in Ottawa or in Renfrew, the nearest business centers, and that although she would accept work in Arnprior as she could use the family car to go to and from work, the employment would have to be commensurate with her previous salary, \$185.00 a month, and her experience as a permanent supervisor.

JURISPRUDENCE: Applied in CUB 1091.

Appeal of the claimant dismissed.

June 6, 1950 (Reversed)

CUB 579

SUITABLE EMPLOYMENT (Change from usual conditions—shift work).**VOLUNTARY LEAVING (Change in occupation, Just cause not shown, Suitability of employment as reason).***Section 41(1) of the Act (1946)*

A 37-year-old married claimant who had been employed as a baker from April to December 10, 1949, voluntarily left on the grounds the bakery had been moved to the outskirts of the city and also he would have been required to start work at 10:00 p.m. instead of 3:00 a.m. as previously.

The claimant was disqualified for six weeks for voluntary leaving. The local office reported that 10:00 p.m. was the prevailing starting time in the baking industry. The court of referees unanimously removed the disqualification on the grounds that the change of hours was a breach of his contract of service.

Upon appeal, it was held that, notwithstanding the revised terms, the employment was still suitable within the meaning of the Act and had it been offered to the claimant while unemployed, he would not have had good cause for refusing it.

JURISPRUDENCE: Followed in CUB 987.

Appeal of the insurance officer allowed.

June 7, 1950 (Affirmed)

CUB 583

*(French)***ADJUDICATION PROCEEDINGS (Board of Referees: claimant present, examination of witnesses, familiarity with local situation, unanimous decision—finding of fact).****VOLUNTARY LEAVING (Domestic circumstances, Duration of disqualification, Extenuating circumstances, Grievances raised with employer, Just cause not shown, Prospects of other employment not investigated beforehand, Working conditions).***Section 41(1) of the Act (1946)*

A 38-year-old single claimant who had been employed as a labourer by a yogurt manufacturer at 40¢ an hour since October 1946, applied for benefit on November 22, 1949, stating he had voluntarily left three days earlier because the salary was too low, keeping in mind his responsibilities as a breadwinner, and he had asked for an increase many times but without success. The employer reported that he was earning \$30.00 a week and had left because he was not satisfied.

The claimant was disqualified for a period of six weeks for voluntary leaving. The court of referees unanimously maintained the disqualification, noting that the claimant was paid overtime of time and a half after 60 hours of work and was in fact working 66 hours per week; while it felt that the claimant should have assured himself of other employment it noted also that, despite promises and requests, the claimant had never received any increase and accordingly it reduced his disqualification to three weeks in view of his patience.

Upon appeal, the case was held to be one of fact only, on which the court of referees which had the opportunity of examining all the circum-

stances in the light of the claimant's testimony, was unanimous in finding that the claimant should have assured himself of other employment before leaving. It was noted that the long hours of work did not give the claimant all the opportunities desired in order to look for work elsewhere but it was held however, that this factor must have been taken into consideration by the court of referees when it reduced the disqualification from six to three weeks.

JURISPRUDENCE: Referred to CUB 593 re reduced disqualification.

Appeal of the claimant dismissed.

June 7, 1950 (Affirmed)

CUB 584

(French)

MISCONDUCT (Insubordination, Industrial Offences, Relations with supervisors, Rules not followed, Union activities).

Section 41(1) of the Act (1946)

The claimant had been employed as a labourer by a linoleum manufacturer from November 1947 to December 1, 1949, when he was dismissed upon being caught just as he was about to smoke during his regular working hours in a restricted area considered unsafe for such hazard by his employer.

The claimant was disqualified for a period of six weeks. The claimant appealed, stating that he had been dismissed rather because he was president of the local union and had negotiated the collective agreement with the employer, that the incident occurred during the period when smoking was allowed by the company, and that this practice was allowed by most foremen. The court of referees maintained the disqualification.

Upon appeal, it was held that the claimant had knowingly committed a violation of the rules of the company, having been warned against it at the time of hiring and, furthermore, having knowledge that 15 days prior to his dismissal another employee had been suspended one week for the offence. It was held further that the fact that other employees were taking the liberty of smoking in forbidden areas or that it was the claimant's first offence and the company had dealt with similar cases in the past with more leniency, could not be accepted as justification for his misconduct; furthermore, if the claimant's conduct was, as he contended, under observation in view of his union activities, he had all the more reason to abide by the rules and regulations of the company.

JURISPRUDENCE: Applied in CUB 1345 but varied.

Appeal of the claimant dismissed.

July 3, 1950 (Reversed)

CUB 590

UNEMPLOYED (Availability for full-time work despite employment, Engaged on own account, Off-season unemployment).

Section 27(1)(a) of the Act (1946)

A 32-year-old single claimant renewed claim for benefit on November 4, 1949, stating that he had been engaged in business on his own account as a trucker, from August to October 1, 1949 transporting grain, etc., at

\$10.00 a day, and from October 22 to November 1, 1949 hauling gravel for the city at 62¢ a yard. He also stated that during the greater part of 1948 and for one week in March 1949, he had worked for the provincial Department of Highways at 65¢ an hour for his labour and \$2.40 an hour for his truck; subsequently, he added that the truck he owned was of three-ton capacity, winterized and ready for operation at any time work became available.

The claimant was disqualified as not unemployed. The court of referees removed the disqualification on the grounds that the claimant was available for work and also was unemployed "due to circumstances beyond his control".

Upon appeal, it was held that in accord with the jurisprudence, the claimant could not receive benefit for the days he was idle in his trucking business and derived no profit therefrom. The evidence indicated that the claimant was ready at all times to take trucking work and unlike the claimant in CUB 469, he had clearly indicated his intention to carry on a year round business.

JURISPRUDENCE: CUB 469 distinguished.

Distinguished in CUB 1214.

Appeal of the insurance officer allowed.

July 3, 1950 (Reversed)

CUB 594

AVAILABILITY (Disqualification—indefinite, Domestic circumstances, Intention of claimant, Married women, Personal circumstances, Restricted to part-time only, Voluntarily left—joint disqualification).

Section 27(1)(b) of the Act (1946)

A 25-year-old married woman who was employed as a comptometer operator by an oil company from 1945 to January 13, 1950, applied for benefit on January 20, stating that she had voluntarily left her employment because she wanted part-time work only as her husband worked from 4:00 p.m. to 1:00 a.m., and that she was available from 1:00 to 5:00 p.m., five days a week.

The claimant was disqualified for a period of six weeks for voluntary leaving and also as not available for work until she proved otherwise. The claimant appealed, stating she would be willing to accept work from 9:00 a.m., to 2:00 p.m., but could not accept full-time work.

Upon appeal, it was held that "unless there are special circumstances such as being the breadwinner of the family and there are reasonable opportunities of part-time work in the district, a married woman cannot voluntarily leave full-time employment, register in her usual occupation for part-time work only, and be considered as available for work within the meaning of the Act" and that as there were no special circumstances in the present case, the claimant should adjust her personal needs if she has or wishes to work.

JURISPRUDENCE: Distinguished in CUB 903 and applied in CUBs 906, 1171 and 1477.

Appeal of the claimant dismissed.

July 6, 1950 (Reversed)

CUB 598

EARNINGS (Bonuses, Retirement pay. Usual remuneration).**UNEMPLOYED (Usual remuneration).***Sections 27(1)(a) and 29(1)(a) of the Act (1946)*

A 39-year-old married claimant who had worked as a bottler for a brewery company from May 21, 1948 to September 30, 1949 at \$1.20 an hour when he was laid off for lack of work, was paid on separation, \$24.00 in vacation pay, \$48.00 pay in lieu of notice, \$60.00 as a gratuity and \$48.00 as a bonus.

The claimant was disqualified as deemed not to be unemployed from October 1 to October 17, 1949, by reason of the gratuity and bonus payments. The court of referees adjourned its hearings twice to obtain further information. The union stated it would not contest benefit being withheld for the period covered by wages in lieu of notice but only the disqualification with respect to the gratuity, finding no authority in the Act for the division of such money into two weekly instalments. The employer reported that the annual bonus, which is based on one week's pay plus a premium for years of service, was paid purely at the discretion of the company's directors and had been paid for the past several years. A majority of the court of referees found that benefit should not be withheld under Benefit Regulation 5A in respect of vacation pay or pay in lieu of notice but that, in accord with CUBs 258 and 420, both the gratuity and the bonus represented compensation for lost of, and substantially equivalent to, the claimant's ordinary remuneration.

Upon appeal, it was held that the gratuity and bonus, which is paid as a lump sum computed on the basis of the claimant's weekly pay and years of service, should not be looked upon as having been paid to him in respect to, or in consideration of, a period following termination of the claimant's employment. Furthermore, as the evidence indicated that the said sum was paid to the claimant as an act of grace and not as payment by way of wages in accordance with his contract of service, or by way of damages or compensation for loss of remuneration, it was neither remuneration nor compensation within the meaning of subparagraphs (i) and (ii) respectively of Section 29(1)(a) of the Act. Finally, it was held that, as the decisions in CUBs 258 and 420 were inconsistent with the present principle, they were no longer to be followed. In arriving at the decision, the Umpire noted the more lenient interpretation possible in view of the Commission bringing in Benefit Regulation 5A (P.C. 5838, effective January 12, 1949) since replaced by Benefit Regulation 5(2)(e) (P.C. 6128, effective December 28, 1949).

JURISPRUDENCE: CUBs 258* and 420* overruled.

Applied in CUBs 600 and 603.

Appeal of the claimant allowed.

*Printed in Selected Decisions (ed. 1950) and not digested to date

September 5, 1950 (Varied)

CUB 605

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—finding of fact—varied, Commission's responsibility re claims procedures, Disqualification—extenuating circumstances—revision, Evidence—benefit of doubt, Umpire—decision).

VOLUNTARY LEAVING (Duration of disqualification, Extenuating circumstances, Grievances raised with employer, Just cause not shown, Prospects of other employment not investigated beforehand, Working conditions).

Section 41(1) of the Act (1946)

A 20-year-old single claimant who had been employed from January 23 to February 10, 1950 as a footwear trimmer, voluntarily left because he was working only about two days a week and earning \$6.00.

The claimant was disqualified for a period of six weeks. The employer explained that the claimant had worked three nights for a total of 15 hours but that other workers who had started at the same time as the claimant were now employed during the day and earning good wages. The court of referees unanimously removed the disqualification.

Upon appeal, it was held that the circumstances were almost identical with those in CUB 341 in which the claimant was found not to have just cause inasmuch as partially employed claimants have ample time to look for other work while retaining their job and if they file a short-time claim for benefit, do not suffer hardship that they would not continue to suffer upon becoming totally unemployed. It was held, however, that inasmuch as the claimant was obliged to report every day in order to ascertain if work was available and, moreover, as it was not unreasonable for the claimant to be under some misapprehension as to his claim status while so employed, the disqualification should be reduced to one week only.

JURISPRUDENCE: CUB 341 followed.

Followed in CUB 789q.

Appeal of the insurance officer allowed but disqualification reduced to one week.

September 7, 1950 (Affirmed)

CUB 608

ADJUDICATION PROCEEDINGS (Evidence: burden of proof on claimant).

CLAIMS MATTERS (Dependency: widowed mother temporarily unemployed, self-contained domestic establishment).

Section 31(2) of the Act (1946)

A 21-year-old single claimant who had been receiving benefit at the single rate since October 11, 1949, claimed the dependency rate on January 18, 1950 in respect of his widowed mother who had exhausted her unemployment insurance benefit and was without any means of support.

The dependency rate was not allowed. The claimant appealed on the grounds that his mother during the last three years had worked part-time during the summer months only, as a result of which the burden of the up-keep of his mother's home rested on him. The court of referees unanimously allowed the dependency rate.

Upon appeal, it was held that the only logical test was that set out in CUB 403; "In order to receive benefit at the dependency rate, the claimant must show a continuity of relationship of dependency to a degree such that his genuineness may not remain doubtful". It was further held that while the question of dependency is one of fact and such continuity might be shown although the claimant assumes the dependency while on benefit if, from the very start, that dependency takes a character or is based on facts more or less permanent in duration, in the present case the dependency did not go beyond that brought about by temporary unemployment. It was held furthermore to be very doubtful that the son could reasonably be assumed to maintain a self-contained domestic establishment.

JURISPRUDENCE: CUB 403q. applied.

Applied in CUB 1007.

Appeal of the insurance officer allowed.

September 7, 1950 (Affirmed)

CUB 610

AVAILABILITY (Disqualification indefinite, Domestic circumstances, Intention of claimant, Prospects of employment remote, Restricted as to area, Voluntarily left—joint disqualification).

VOLUNTARY LEAVING (Availability—joint disqualification, Change of residence, Domestic circumstances—temporary, Just cause not shown, Prospects of other employment not investigated beforehand).

Sections 27(1)(b) and 41(1) of the Act (1946)

A 32-year-old married claimant who had been employed as a chainman by a firm of locomotive builders in Montreal, from July 9 to November 11, 1949, applied for benefit stating that as he had been unable to find suitable accommodation for his wife and three children in Montreal since November 1948 he had sent his wife and children to live with his parents-in-law in March 1949 but, finally, in November, he had had to move them to the family homestead in Perce, Gaspé Peninsula where his bachelor brother lived; to avoid scandal and to help out, for instance, in carrying water for the house by hand, he had felt it necessary to leave his employment and go there for the winter.

The claimant was disqualified for voluntary leaving without just cause and as not available for work. The court of referees unanimously maintained the two disqualifications but gave leave to appeal for the purpose of guidance.

Upon appeal, it was held that there was no basis for disturbing the unanimous finding of the court of referees. It was further held that the principle to be followed was that stated in CUB 430: "Availability for work is primarily a subjective matter which must be considered in the light of a claimant's intention and mental attitude towards accepting employment. Viewed objectively, it might be determined by a claimant's prospects of employment in relation to a certain set of circumstances beyond his control or which he has deliberately created." CUB 430 was distinguished from the present case in that the claimant involved had moved to a smaller town which, unlike the village in the present case, had offered some opportunities for work, for which reason it had been held that some

little time should be given the claimant before questioning his availability; in the present case, the claimant had practically no chance of obtaining employment, an assumption by the insurance officer which was borne out by the facts.

JURISPRUDENCE: CUB 430q. distinguished.

Distinguished in CUB 736.

Appeal of the claimant dismissed.

September 7, 1950 (Affirmed)

CUB 611

(French)

MISCONDUCT (Absence).

VOLUNTARY LEAVING (Change of residence, Domestic circumstances—temporary, Just cause not shown, Misconduct alternatively, Tantamount to voluntary leaving).

Section 41(1) of the Act (1946)

A 51-year-old married claimant who had been employed as a reinforcement steel placer from March 10 to March 31, 1950 applied for benefit on April 12 stating he had been laid off for shortage of work. The employer reported that the claimant had been replaced after an absence of one week without explanation.

The claimant was disqualified for a period of six weeks. The claimant appealed on the grounds he had had to absent himself because he had been evicted from his home, adding that he had requested a fellow worker to notify the foreman. The court of referees unanimously maintained the disqualification.

Upon appeal, it was held that "the claimant, who had only been in the employ of the company for a short time, certainly did not take the precautions which any prudent and reasonable person would have taken in the same circumstances. He should have asked the employer's permission for leave of absence or at least, explained to him personally why he could not attend work". Accordingly, the court of referees had rightly found that the claimant's conduct was tantamount to voluntarily leaving his employment without just cause.

JURISPRUDENCE:

Appeal of the claimant dismissed.

September 7, 1950 (Affirmed)

CUB 612

ADJUDICATION PROCEEDINGS (Interpretation).

VOLUNTARY LEAVING (Change of residence, Domestic circumstances—marriage, Just cause shown, Married women leaving the area, Prospects of other employment not investigated beforehand).

Section 41(1) of the Act (1946)

A 27-year-old married woman who had been employed in Timmins, Ontario as a bookkeeper since March 1946, had voluntarily left her employment on January 4, 1950, giving as her reason that the firm was changing hands on February 1, 1950 and also that she wanted to be with her husband who was a fifth year dentistry student at Toronto University.

The claimant was disqualified for a period of six weeks. The court of referees unanimously removed the disqualification in view of the principle stated in CUB 45 that "a wife has a legal and moral obligation to live with her husband wherever he has established his residence or domicile".

Upon appeal, it was held that in a case such as that of the claimant or that of a married woman who refuses to accept employment outside of her own district due to marital circumstances the principle laid down in CUB 45 must be borne in mind. It was held however, that too rigid an interpretation of this principle would lead to abuses such as where claimants join their husbands in small communities where they could not reasonably expect to find employment or refuse, after a lengthy period of unemployment, to accept employment outside their residential district where there is no likelihood of employment for them, in which cases just or good cause would not have been shown. It was held that in the present case the husband had established his residence or domicile in Toronto where there were no doubt fair opportunities of work.

JURISPRUDENCE: CUB 45q.* applied.

Distinguished in CUBs 685q. and 772, and applied in CUB 1091.

Appeal of the insurance officer dismissed.

September 7, 1950 (Reversed)

CUB 619
(French)

SUITABLE EMPLOYMENT (Availability—disqualification for refusal only, Change from usual conditions—hours of work—transportation facilities, Duration of unemployment—long, Good cause not shown, Personal circumstances, Prevailing conditions).

Section 40(1)(a) of the Act (1946)

A 26-year-old single woman who had been employed as a secretary with a pulp and paper company in Quebec City from 1947 to September 1949 when her position had been abolished, and had applied for benefit on April 27, 1950 stating she had been away on a trip, refused on May 1, 1950 an offer of temporary employment as a stenographer with a firm of lawyers at approximately the same rate of pay giving as her reason that the employment was only temporary and the hours of work 9:00 a.m. to 6:00 p.m., for a total of 39 hours a week, were inconvenient in view of her living in the country for the summer. The local office reported that the employer had raised its original offer of \$30.00 a week to \$150.00 a month to secure the claimant's services and her employment would have been permanent if she had proved satisfactory.

The claimant was disqualified for a period of six weeks for her refusal. The court of referees unanimously removed the disqualification on the grounds the claimant would not have been able to take the 6:00 p.m. bus to her summer place.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

Upon appeal, it was held that as the claimant must conform to the exigencies of the labour field, and if she was genuinely seeking employment, she should have adjusted her personal affairs in order to be ready to immediately accept the offer of employment notified to her.

JURISPRUDENCE: Applied in CUB 1113q.

Appeal of the insurance officer allowed.

September 8, 1950 (Reversed)

CUB 620

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—credibility—finding of fact—reversed, Evidence: employer information, statement before disqualification).

AVAILABILITY (Domestic and Personal circumstances, Pregnancy of the claimant, Presumption of non-availability, Prospects of employment, Restricted as to duration, generally and to part-time only, Voluntarily left—disqualification only as not available).

CAPABLE OF WORK (Availability affected, Pregnancy, Separation in this connection).

VOLUNTARY LEAVING (Availability—disqualification as not available only, Capability for work, cause—pregnancy).

Section 27(1)(b) of the Act (1946)

A 30-year-old married woman who had been employed as a stenographer from 1945 to January 31, 1950, applied for benefit stating that she had separated from her employment because she found exhausting and monotonous the new duties on invoice work to which she had been assigned one month after she had notified her employer in September 1949 that she was pregnant and a new stenographer had been hired.

The claimant was disqualified as not capable of nor available for work. The claimant submitted in appeal a medical certificate, dated February 28, to the effect that she had remained capable of employment as a stenographer since February 1 and should remain so until about May 1. The court of referees removed the disqualification.

Upon appeal, after quoting in detail from CUB 530 which set up the rule referred to by the insurance officer in appeal, to the effect that, in the case of a married women who, after voluntary leaving her employment on account of pregnancy, was available for part-time work only, benefit should not be allowed unless there were special distressed circumstances where the claimant is the bread-winner of the family and reasonable opportunities of part-time work prevail, it was held that this rule applied to all cases where claimants voluntarily leave their employment due to pregnancy. It was held in the present case that the claimant's notice to her employer that she was pregnant as far back as the early part of September 1949, indicated that she intended to leave her work when she was replaced and, accordingly, it was very doubtful that she was desirous of obtaining work or in fact likely to obtain any on February 1, 1950.

JURISPRUDENCE: CUB 530 referred to.

Distinguished in CUBs 621 and 1614, applied in CUB 734, 1092q. and 1111 and followed in CUBs 930, 965 and 1513.

Appeal of the insurance officer allowed.

September 8, 1950 (Reversed)

CUB 621

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—credibility—reversed).

AVAILABILITY (Pregnancy of claimant, Presumption rebutted, Prospects of employment, Voluntarily left—disqualification only as not available).

CAPABLE OF WORK (Availability affected, Pregnancy, Proof, Separation in this connection).

VOLUNTARY LEAVING (Availability—disqualification as not available only, Capability for work, cause—pregnancy, Just cause shown, Transportation and travel as cause).

Section 27(1)(b) of the Act (1946)

A 29-year-old married woman residing in St. Thomas, Ontario, who had been employed in London, Ontario with the local office of the Commission as a casual clerk from August 22, 1949 to April 28, 1950, applied for benefit stating she had left voluntarily because she was pregnant and the daily travelling by train upset her. She stated she was available for work in St. Thomas and subsequently submitted a medical certificate dated May 9 to the effect that she expected to be confined about November 1, 1950 and would be able to work until September 15.

The claimant was disqualified as not capable of nor available for work and the court of referees maintained the disqualification. The St. Thomas' local office reported on June 21 that the claimant's prospects of employment in the area were exactly the same as any other claimant in that occupation and added it was employing the claimant as a clerk for about three weeks.

Upon appeal, it was held that the presumption of non-availability referred to in CUB 620 had been successfully rebutted inasmuch as her explanation for having left after a month or two of pregnancy was plausible and under normal circumstances, her condition, at that time, would not have affected her capability for work, and, furthermore, as it appeared the claimant was to be re-employed in June in her home town.

JURISPRUDENCE: CUB 620 distinguished.

Distinguished in CUB 734 and applied in CUB 1513.

Appeal of the claimant allowed.

October 2, 1950 (Affirmed)

CUB 622

LABOUR DISPUTE (Apprentices, Conditions of employment, Direct interest, Financing, Grade or class—apprentice, Participating, Proof, Shortage of work, Union membership).

Section 39 of the Act (1946)

The claimant had been employed as an apprentice plumber by a firm of plumbers from August 1947 to December 31, 1949 and from January 9 to January 31, 1950 when he lost his employment by reason of a stoppage of work due to a labour dispute between the local Master Plumbers' Association and the local union of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry over wage rate, vacation pay, hours of work, etc., to be provided by the new collective agreement being drafted to replace that which expired December 31, 1949. On January 3, 1950 a general stoppage

of work had taken place at the premises of approximately 37 employers, affecting some 375 workers, comprising journeymen, plumbers, plumbers' helpers, apprentice plumbers, etc.

The claimant was disqualified under Section 39 of the Act. In appeal to the court of referees, it was contended that the apprentices were governed by the provincial Apprenticeship Act and their respective indentures and were not included in the agreement in question. The claimant stated he had been laid off on January 28 due to lack of work and had been told not to come back until called. The court of referees maintained the disqualification.

Upon appeal, it was held that the claimant must be considered as having been a participant regardless of the trade regulations of the Apprenticeship Act whereby a junior mechanic "shall not be obliged to remain with the employer during a strike or lock-out" because, in addition to being a member of the union, which in itself is not conclusive evidence, he was present at the strike meeting of his local when the journeymen decided to strike and, despite his contract of apprenticeship with his employer, he did not report for work on the morning the strike commenced. Furthermore, it was held that the claimant was directly interested because although the apprentices were paid a flat rate of wages and would not have benefited from an increase to the journeymen, any increase in the vacation period with pay would also apply to the apprentices and, furthermore, their hours of employment had to be the same as those of the journeymen which were under negotiation, and, finally, the apprentices would probably have benefited also if the journeymen's demands for 'double time on Saturdays' was granted, the apprentices in the above regard being clearly distinguished from other building tradesmen whose employment was cut off by the strike. It was finally held, unnecessary, in the light of the above, to examine whether the apprentices had financed the dispute or belonged to a grade or class of workers within the meaning of paragraph (b) of subsection (2) of Section 39 of the Act.

JURISPRUDENCE: Followed in CUB 1521A and distinguished in CUB 1591.

Appeal of the claimant's union dismissed.

October 3, 1950 (Affirmed)

CUB 626

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—general).

CAPABLE OF WORK (Permanent incapacity, Separation from employment in this connection, Workmen's compensation).

CLAIMS MATTERS (Antedate—good cause for delay).

Section 36(6) of the Act (1946)

and

Section 13 of the Benefit Regulations, 1949

A 54-year-old claimant who had been employed as a carpenter in the bridge and building department of an Alberta railway company from August 30, 1949 to January 31, 1950 when he was injured in the course of his employment and hospitalized until February 7, 1950, received workmen's compensation on February 28 for the period of January 31 to February

16, 1950. He applied for benefit on March 4 and requested that his claim be antedated to February 17 on the grounds that the Workmen's Compensation Board had failed to notify him before February 28 that his compensation had terminated on February 16.

The claimant's application for antedate was refused by the insurance officer but allowed by the court of referees.

Upon appeal, it was held that as it was not unreasonable for the claimant to be under a misapprehension as to his benefit rights while receiving workmen's compensation, the finding of the court of referees should not be disturbed in view of the particular circumstances of the case despite the general rule that in case of doubt as to benefit rights the claimant should communicate with the local office. For the purpose of future guidance, however, it was held that a claimant while being treated for an injury and in receipt of temporary workmen's compensation would be deemed not to be capable of work and once his permanent disability was determined, his capability for work should be considered by the adjudicating authorities "in relation to the degree of probability for him to perform or to obtain some kind of work".

JURISPRUDENCE: Referred to in CUB 1077 and applied in CUB 1176q.

Appeal of the insurance officer dismissed.

November 28, 1950 (Varied)

CUB 634

ADJUDICATION PROCEEDINGS (Interpretation).

VOLUNTARY LEAVING (Availability questionable, Change of residence as cause, Duration of disqualification, Extenuating circumstances, Just cause not shown, Personal circumstances, Tantamount to voluntary leaving).

Section 41(1) of the Act (1946)

A 29-year-old married claimant residing in Belleville, Ontario, who had been employed, at the salary of a sales manager, in a retail shoe store, from December 6, 1949 until May 13, 1950, stated as his reason for separation, his refusal to transfer to a branch store in Picton, 45 miles away. The employer reported that it had been the understanding that the claimant, following training, would be assigned to another location and that upon his refusal he could not be paid manager's wages for doing only a salesman's job. The claimant added that he had been given slightly less than 24 hours' notice of the transfer and he had offered to remain at a lower wage rather than break up his established home.

The claimant was disqualified for a period of six weeks for voluntary leaving. A majority of the court of referees upheld the disqualification.

Upon appeal, it was held that the question of a transfer was an implied condition of the claimant's contract of service inasmuch as the claimant had been attending a course of instruction at the company's training school and, although working as a sales clerk, was paid a manager's wage and that the claimant should have anticipated such a transfer. It was held accordingly that the claimant's refusal was in effect tantamount to voluntary leaving. It was held however that the claimant could have been given a little more time to settle his personal affairs and the period of disqualification was accordingly reduced to two weeks.

JURISPRUDENCE: Distinguished in CUB 803.

Appeal of the claimant dismissed but disqualification reduced to two weeks.

November 30, 1950 (Affirmed)

CUB 639

ADJUDICATION PROCEEDINGS (Disqualification—joint—procedure, Interpretation, Jurisdiction of adjudicating authorities re procedure, Umpire—decision).

SUITABLE EMPLOYMENT (Disqualification duration).

UNEMPLOYED (Disqualification).

VOLUNTARY LEAVING (Duration of a disqualification, Grievances raised with employer, Tantamount to voluntary leaving, Working conditions).

Section 41(1) of the Act (1946)

A 23-year-old married claimant who had worked as a bookkeeper since November 10, 1949, renewed her claim for benefit on April 11, 1950, stating she had been laid off on April 6 because her services were not required. The employer reported that the claimant had "resigned stating she was dissatisfied, but her leaving was expedited with a week's pay in lieu of notice." The claimant then reported she had given one month's notice ending April 30 but that her employer had released her immediately.

The claimant was disqualified as not unemployed for the period of April 7 to April 13 and also for a period of six weeks from April 14 for having voluntarily left without just cause. The court of referees unanimously maintained the disqualifications but set the commencement date for that imposed under Section 41(1), as April 29. The insurance officer appealed for guidance on the commencement date and whether such disqualification should run concurrently with the disqualification under Section 27(1)(a) of the Act.

Upon appeal, it was held that the separation was a natural consequence of the claimant's expressed intention to leave at the end of the month and that the disqualification under Section 41(1), in the absence of special circumstances, should run only from the date immediately following that on which she would have voluntarily left her employment had she not been dismissed earlier. As to whether a disqualification under Sections 40 and 41 should run concurrently with a disqualification under Section 27(1)(a), it was held that no hard and fast rule should be laid down, the matter being left to the discretion of the statutory authorities when dealing with the merits of the case.

JURISPRUDENCE: Followed in CUB 1498.

Appeal of the insurance officer dismissed.

January 8, 1951 (Varied)

CUB 641

ADJUDICATION PROCEEDINGS (Interpretation, Umpire—decision).

LABOUR DISPUTE (Attributable to labour dispute, Definition, Existence of labour dispute, Extension of labour dispute, Grade or class, Incidents characteristic of labour dispute, Participation, Parties to dispute, Picketing, Premises, Stoppage of work, Sympathetic strike or lockout, Union membership).

Section 39 of the Act (1946)

The claimants were employed either as carpenters or as labourers on building projects in the city of Victoria, B.C. and were members of two locals both of which belonged to the Victoria Building Trades Council. The claimants' employers were members of the Victoria Building Industry Ex-

change. On March 30, 1950, a stoppage of work took place at the premises of the largest distributor of construction materials on Vancouver Island which supplied certain materials to the claimants' employers. The stoppage of work was due to a labour dispute between that company and its transport workers. Shortly thereafter, members of the transport workers' union, acting as observers, set up picket lines at some of the projects where the claimants were employed; subsequently a stoppage took place first at these projects and then at all the other projects.

The claimants were disqualified under Section 39(1) of the Act. The court of referees allowed the appeal in the case of certain claimants and disallowed them in the cases where the employees had either walked out or refused to cross picket lines.

Upon appeal, it was held that the following facts were established: a special meeting of the Building Trades Council was held on March 31, 1950 at which representatives of the two claimants' unions were present and the general feeling was that picket lines should be respected and 'hot material' should not be handled; on April 4, and 5, some carpenters and labourers walked off the projects where transport union observers were posted or picket lines were established while others refused to cross the picket lines or handle 'hot material'; as a consequence, on April 6, work on a number of projects was halted by the employers following a meeting of the members of the employers' Exchange. Thereafter, articles and notices were published by the Exchange and pamphlets issued by the Council, expressing mutual disagreement with the position adopted by each other. On the basis of the foregoing, it was held that the stoppages were attributable to a labour dispute between the Exchange and the Council, in particular, the carpenters' and labourers' unions, this finding being borne out by the admissions of union officials in evidence that there was work material available on a number of projects and that the action of the employers was a lockout; it was noted in this regard that the Umpire "must be governed by the actual facts and not simply by what the parties term the incidents". It was further held, as regards the legal status of the Exchange and its authority to act for the employers, that it was the Exchange which entered into bargaining agreements with the claimants' unions in 1949 and again acted on their behalf throughout the general stoppage in the spring of 1950; similarly, the Council, on the other hand, acted on behalf of these unions during the said stoppage and the actions of the officials of these unions were not disavowed by their fellow members.

It was further held that a stoppage of work need not be a general cessation of operations and that the number of employees is not the test, it being "sufficient if there is an appreciable interruption in the work which is normally carried on". It was also held that the court of referees erred 'when they considered each construction job as a single entity and not as part of the general construction picture in the City of Victoria as controlled by individual members or companies which made up the Victoria Building Industry Exchange'.

It was finally held that the claimants, by virtue of their own action or that of their unions' leaders, became participants or belonged to a grade or class which was participating in the said labour dispute.

JURISPRUDENCE: Followed in CUB 1447-8q.

Appeal of the claimants' union dismissed and of the insurance officer allowed.

January 26, 1951 (Affirmed)

CUB 644

ADJUDICATION PROCEEDINGS (Interpretation, Jurisdiction of adjudicating authority re legislation).**SUITABLE EMPLOYMENT** (Change from usual wage rate, Good cause shown, Union rules).*Sections 40(2)(b) and 43(b) of the Act (1946)*

The claimant who had been employed as a finisher of ladies wear at \$30.00 a week from July 25 to November 25, 1949, when she was laid off due to a shortage of work, refused an offer on April 27, 1950, of permanent employment in the same occupation, on a piece rate basis of 0.60c a coat, on the grounds she wanted 0.75c a coat, the local office reporting that the wages offered were at the prevailing rate.

The claimant was disqualified for having refused an offer of suitable employment without good cause. The claimant appealed, stating that her union did not allow its members to work at a wage lower than that fixed by her union, which was 75¢ a coat. The court of referees unanimously removed the disqualification on the grounds that as the potential employment was not in a closed shop and acceptance of work therein would make the claimant liable to lose her union rights, and would in fact, violate her union's rules, the employment was unsuitable in the light of Section 43(b) of the Act.

Upon appeal, it was held that the rate of pay offered the claimant in her usual occupation appeared to be lower than that paid in the district by agreement between employers and employees, to workers of her experience and accordingly was not suitable. As regards the insurance officer's contention in appeal that the literal interpretation of Section 43(b) adopted by the court of referees, would allow the union to indirectly dictate to the statutory authorities what is suitable employment for their members, it was held that no other meaning could be given to Section 43(b), the language being clear and unequivocal; it was pointed out however, that there would be no hesitation in recommending to the proper legislative authorities necessary changes should the union take advantage of this interpretation to further the interests of trade unionism to the detriment of other insured workers.

JURISPRUDENCE: Distinguished in CUB 762.*Appeal of the insurance officer dismissed.*

February 19, 1951 (Varied)

CUB 647

ADJUDICATION PROCEEDINGS (Disqualification—revision only).**UNEMPLOYED** (Holidays—general continuous, Retired from regular full-time employment).*Section 29(1)(c) of the Act (1946)**and**Section 5(2)(e) of the Benefit Regulations, 1949*

A 71-year-old claimant who had been employed as a sawmill worker on a full-time basis from 1939 to May 31, 1950, filed a claim for benefit on June 1, stating that henceforth he would be working only two or three days a week and requesting benefit accordingly, which was allowed. On

June 13, the local office reported that the period from July 3 to July 15 was declared holiday at the sawmill where the claimant was employed on a regular pattern of the first three days each week and that he was entitled to one week's holiday with pay.

The insurance officer found the claimant not entitled to benefit for the first week of the plant holiday as deemed not to be unemployed. The court of referees maintained the disqualification but granted leave to appeal. Following the Umpire's request, it was established that the claimant's work had consisted of handling heavy timbers up to June 1950 after which time, by agreement, the claimant was transferred to lighter duties of doing odd jobs around the mill, of which work there was only three days available every week at that employer.

Upon appeal, it was held that the claimant's temporary separation during the plant holiday was not a separation from employment and, furthermore, as he would have been unemployed for six days during the two weeks, irrespective of the plant holiday, he was in a grade or class or shift of workers by himself. It was accordingly held that the days of the week that he normally worked at the mill were during the plant vacation, a recognized holiday whereas the remaining three days of the week constituted a period of unemployment, the court of referees' decision being modified accordingly.

JURISPRUDENCE: Distinguished in CUB 654.

Appeal of the claimant allowed in part.

February 19, 1951 (Affirmed)

CUB 649

VOLUNTARY LEAVING (Grievances not raised, Haste, just cause not shown, Working conditions).

Section 41(1) of the Act (1946)

A 38-year-old married claimant who had been employed as a carpenter by a building contractor from July 10 to July 18, 1950, applied for benefit on August 5, stating he had been laid off due to a shortage of work. The employer reported that the claimant had quit when he was refused an increase of 10c in his hourly rate of \$1.55.

The claimant was disqualified for having voluntarily left. He appealed to the court of referees explaining that after a week and two days in building kitchen cabinets, the employer had told him that the work should only have required three days; he also denied there had been any wage dispute. The court of referees unanimously maintained the disqualification.

Upon appeal, it was held that the claimant had failed to take a course of action in accordance with the principle laid down in many previous decisions that "it is the duty of an employee to exhaust every reasonable means of having his grievances remedied before leaving his employment", the court of referees having properly found the claimant to have acted hastily.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant dismissed.

March 22, 1951 (Affirmed)**CUB 655**

ADJUDICATION PROCEEDINGS (Commission's responsibility re Adjudication procedures and re Notices, Interpretation, Jurisdiction of adjudicating authority re legislation and policy, Umpire—decision).

CLAIMS MATTERS (Married women's Regulation—validity).

Benefit Regulation 5A (1950)

A 28-year-old claimant who had been employed from February 4, 1946, to October 5, 1950 when she lost her employment as a result of a labour dispute had filed a claim for benefit on October 6 and had been disqualified under Section 39 of the Act up to November 11, 1950. The claimant had then married on November 24, 1950.

The claimant was disqualified under Benefit Regulation 5A which became effective on November 15th 1950. The court of referees unanimously maintained the disqualification.

Upon appeal, it was held that "the question of the constitutionality of Benefit Regulation 5A is not one which comes within the purview of the Umpire under the Act. The regulation was approved by the Governor in Council and, in accordance with section 98(1) of the Unemployment Insurance Act, it has the same effect as if enacted in the Act." The Umpire further stated that while he was not prepared to act on the unions' request that he recommend that Regulation 5A be rescinded along with the authorizing statute—although the latter was not as clear and unequivocal as it could be—he would suggest that the Regulation be amended so as to provide, instead of a general disqualification with exceptions, additional conditions for the entitlement of married women to benefit and that such conditions be elastic enough to prevent discrimination. It was further held that it was not unreasonable for the Commission to feel that adequate and effective notice had been given in that, pursuant to Section 98(2) of the Act, it had been studied by the Advisory Committee whose reports to the Governor in Council appeared in the Labour Gazettes, of November 1949 and October 1950.

JURISPRUDENCE: Applied and quoted in CUBs 656 to 673 inclusive, 678 to 683 inclusive, 692, 694 and 697.

Appeal of the claimant's union dismissed.

May 23, 1951 (Reversed)**CUB 696***(French)*

ADJUDICATING PROCEEDINGS (Evidence: burden on administration, employer—information, medical certificate).

VOLUNTARY LEAVING (Capability for work—likely cause, Change in occupation—hours, Grievances raised with employer, Just cause shown, Prospects of other employment not investigated beforehand, Working conditions).

Section 41(1) of the Act (1946)

A 32-year-old single claimant who had been employed as a restaurant cook from September 25 to October 7, 1950, claimed benefit on October 16, stating he voluntarily left because although he had been hired on the understanding he would alternate day and night shifts weekly, the employer subsequently wanted him to work nights only, that is, from 5 p.m. to 2 a.m.

The claimant was disqualified under Section 41(1) of the Act. The claimant in appeal provided medical evidence to the effect that three weeks previous he had been forbidden to eat certain food and ordered to bed not later than 11 p.m. A majority of the court of referees maintained the disqualification but the dissenting member considered there had been a breach of contract of services.

Upon appeal, it was held that the claimant's version which was not contradicted and which was supported, as regards his state of health, by medical evidence, appeared to be plausible and constituted satisfactory evidence that the night employment in question was injurious to his health and, consequently, he had just cause for leaving it.

JURISPRUDENCE: Distinguished in CUB 1074.

Appeal of the claimant allowed.

May 23, 1951 (Affirmed)

CUB 698

VOLUNTARY LEAVING (Just cause not shown, Prospect of other employment not investigated beforehand, Suitability of employment as reason).

Section 41(1) of the Act (1946)

A 23-year-old single claimant who had been employed as office and sales clerk in Red Deer, Alberta at \$160.00 a month from November 1949 to February 28, 1951, applied for benefit in Calgary, stating he had voluntarily left his employment because it offered no future prospects and because the cost of living at home in Calgary would be less.

The claimant was disqualified for a period of six weeks and appealed on the grounds his remuneration was not commensurate with his experience and education (B. Com.) and he would have better employment opportunities in Calgary. The court of referees unanimously found there was not just cause but the Chairman of the court felt the disqualification should be reduced to three weeks to encourage the claimant to obtain employment in which he could make better use of his background.

Upon appeal, it was held that the claimant should have remained in employment until he had definite assurance of work in Calgary, having at his disposal the services of employment offices at Red Deer, and his home town, Calgary, being only 95 miles away with direct and convenient transportation available.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant dismissed.

May 23, 1951 (Reversed)

CUB 705

EARNINGS (Business on own account, Commission, Net earnings).

UNEMPLOYED (Availability for full-time work, Contract of service, Engaged on own account, Separated from regular employment, Subsidiary occupation).

Sections 27(1)(a) and 29(1)(b) of the Act (1946)

A 35-year-old married claimant who had been employed as a machine salesman from February 1st to November 30, 1949, when his services were terminated through reduction of staff, claimed benefit from December 27

to June 17, 1950, when it was reported to the local office that he was selling real estate. The district investigator established that since January 1st, 1950 the claimant had been engaged in selling real estate for a trust company on a straight commission basis, his total earnings to date amounting to \$490.00, consisting of \$210 in February, \$230 in April and \$50 in June for securing a property listing for the company. According to the employer, the claimant was not a regular employee, but was given listings of properties and visited the employer's office about four days a week, a half-hour at a time.

The claimant was disqualified for an indefinite period from January 1, 1950 because he was deemed not to be unemployed under section 29(1) (b), or, in the alternative, not unemployed under section 27(1) (a). The court of referees unanimously removed the disqualification.

Upon appeal, it was held that section 29(1) (b) did not apply as it was not a subsidiary occupation inasmuch as the claimant had become a real estate agent with the intention of fully exploiting the possibilities of that occupation and of remaining in it if successful. It was held further that this was an alternative occupation for the claimant, irrespective of the amount of time he devoted to his work or the amount of remuneration he derived therefrom.

JURISPRUDENCE: Distinguished in CUBs 838 and (inferentially) 1571, and applied in CUB 1088.

Appeal of the insurance officer allowed.

June 18, 1951 (Reversed)

CUB 708
(French)

ADJUDICATION PROCEEDINGS (Jurisdiction of adjudicating authority re aspect not brought to appeal).

AVAILABILITY (Prospects of employment, Restricted to former occupation).

SUITABLE EMPLOYMENT (Availability—disqualification only for refusal, Good cause not shown, Prospect of return to former work, Reasonable interval).

Section 40(1)(a) of the Act (1946)

A 21-year-old single claimant who had been laid off on December 28, 1950, from employment since 1947 as a general helper in a sugar-refinery at \$0.75 an hour, refused an offer of employment on January 19, 1951 as a general helper in a paint factory at \$0.73 an hour, on the grounds she expected to return to her previous employment at the end of February or the beginning of March.

The claimant was disqualified for a period of six weeks by reason of her refusal. At the hearing of the court of referees the claimant stated she had returned to her previous employment on February 21 and the majority of the court removed the disqualification.

Upon appeal, it was held that whereas a claimant who has the assurance of obtaining work within a reasonable period of time has good cause for refusing other employment, the interval of five or six weeks in the present case was not reasonable. Furthermore, it was held the insurance officer would have been fully justified in deciding the claimant was not available for work.

JURISPRUDENCE: Distinguished in CUB 1141.

Appeal of the insurance officer allowed.

June 18, 1951 (Reversed)**CUB 710***(French)***MISCONDUCT (Absence—tardiness, Insubordination, Rules not followed).***Section 41(1) of the Act (1946)*

A 30-year-old married claimant who had been employed as a bakery route salesman since July 3, 1950, applied for benefit on January 31, 1951, stating he had lost his employment the previous day because of dissatisfaction with his services; the employer reported the claimant has been dismissed because of continual lateness in arriving to work. The claimant admitted that on some mornings he had not arrived until 5:15 a.m. and on others until 5:45 a.m. and that he had been warned about his tardiness, the prescribed time being 5 a.m.; on the morning of his dismissal he had come in at 5:50 a.m.

The claimant was disqualified for a period of six weeks for loss of employment by reason of misconduct. He applied on the ground that the volume of work did not warrant his arriving early, only 15 minutes being required to load his wagon and not being able to start deliveries till 7:30 a.m.; he added that his work was usually completed at 1 p.m. The court of referees unanimously removed the disqualification.

Upon appeal, it was held that the claimant's repeated lateness, despite warning, constituted misconduct, the employer having the right to demand the claimant's presence at the agreed starting time even if there was little work for him to do prior to going out on his delivery route.

JURISPRUDENCE: Applied in CUB 843.

Appeal of the insurance officer allowed.

June 18, 1951 (Affirmed)**CUB 711***(French)***AVAILABILITY (Antedate, Circumstances beyond claimant's control).****CLAIMS MATTERS (Antedate: delay not for reasons beyond control, conditions of entitlement—availability).***Section 36(6) of the Act (1946)**and**Section 13 of the Benefit Regulations, 1949*

The claimant, who had been employed as a shipper by a glove manufacturer since 1923, had been laid off for shortage of work on August 23rd, 1950 and filed a claim for benefit on August 31st, which was allowed. On January 17th, 1951, he filed a renewal claim in which he had stated having worked for the same employer from October 2nd till December 30th when he was again laid off; at the same time he requested his claim be antedated to January 2nd, 1951 on the ground he had delayed filing his claim because he had been expecting from day to day, as confirmed by the employer, to be recalled to work.

The request for antedate was refused by the insurance officer and the court of referees.

Upon appeal, it was held that antedate is an exceptional measure from which can benefit only those claimants who have been prevented from filing their claim earlier by conditions over which they had no control. It was held that the claimant had previously received benefit and was well aware that he was entitled to it only from the day he filed his claim. It rested therefore with him to report to the local office in order to establish his right to benefit and, at the same time, *to avail himself of any opportunity of suitable employment*. It was finally held that the right to benefit was conditional on the fulfilment of certain conditions, one of which is availability for work; a claimant must prove in a satisfactory manner that he was ready to accept any suitable employment during the period for which he retroactively claims benefit.

JURISPRUDENCE: Followed in CUB **1210** and applied in CUBs 1306 and **1357**.

Appeal of the claimant dismissed.

July 11, 1951 (Reversed)

CUB 716

LABOUR DISPUTE (Attributable to L.D., Loss of employment, Separation prior to stoppage, Shortage of work, Union membership).

Section 39 of the Act (1946)

The claimant who had worked intermittently as a handyman in a North Vancouver shipyard and drew benefit in between assignments, had been laid off on October 16, 1950 upon completion of the repairs to the ship on which he had been working. On October 18, the union of which the claimant was a member, after taking a vote, declared a strike following failure of negotiations with the employer for a wage increase and improved arrangements for certain statutory holidays.

The claimant was disqualified for the duration of the stoppage. The court of referees unanimously maintained the disqualification.

Upon appeal, it was held that the claimant's lay-off was due to lack of work and had no connection with the labour dispute then in progress at the shipyards, the servicing of each ship entailing the engagement and dismissal of personnel as the job required, in this case the job being completed two days before the stoppage commenced. It was further held, that as the claimant's work pattern was irregular, the length of his lay-off was indefinite and there was no indication as to what was or would have been the amount of work on hand at the yards and, finally, as his re-employment did not take place immediately upon termination of the stoppage of work, the claimant did not lose his employment by reason of a stoppage of work due to a labour dispute. CUB 417 was distinguished as involving a regular employee who was laid off in anticipation of a work stoppage.

JURISPRUDENCE: CUB **417*** distinguished.

Applied in CUBs **868** and **870**.

Appeal of the claimant's union allowed.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

July 12, 1951 (Affirmed)

CUB 717

AVAILABILITY (Personal circumstances, Restricted as to days—Sabbath on Saturday, Suitable employment refused—general).

SUITABLE EMPLOYMENT (Availability—general, Good cause shown, Personal circumstances).

*Sections 27(1)(b) (1946), 29(1)(i) and 97(q.) of the Act (1952)
and*

Benefit Regulation (5)(2)(f) (1951)

The claimant who had been employed as a stitcher with a boot and shoe manufacturer in Toronto operating on a five-day week, from May 1941 to March 14, 1950 when he was laid off for shortage of work, and applied for benefit and subsequently was re-employed until July 12, 1950, stated, upon further questioning in October 1950 by an officer of the local office, that he was not available for employment on Saturdays due to religious obligations.

The claimant was disqualified retroactively as not available for all the Saturdays for which he received benefit. The court of referees unanimously maintained the disqualification.

Upon appeal, it was noted that a new regulation, Benefit Regulation 5(2)f, had been enacted effective July 1, 1951, by the Commission pursuant to its power under Section 97(q) of the Act whereby benefit was allowed in future for Sunday in the case of a person who observed the Sabbath on a Saturday because of religious convictions. It was held however, that even though such claimant shows good cause and does not necessarily restrict the total sphere of his employment when he refuses employment involving work on Saturday because of his religious beliefs, he, nevertheless, establishes by that very fact, prior to the new Regulation being enacted, his non-availability for work on that day. The present case was distinguished from CUB 384 in which had been sustained the right of a Seventh Day Adventist to refuse employment involving work on Saturday as unsuitable; it was recognized that in some cases availability for work and suitability of employment were closely related but the two questions had always been considered the subject of two separate adjudications, as in the present case.

JURISPRUDENCE: CUB 384* distinguished.

Followed in CUB 719.

Appeal of the claimant dismissed.

August 20, 1951 (Reversed)

CUB 723

SUITABLE EMPLOYMENT (Availability—disqualification only for refusal, Duration of unemployment—long, Good cause not shown, Prospect of return to former employer, Reasonable interval).

Section 40(1)(a) of the Act (1946)

A 43-year-old married claimant who had been employed as an advertising collector for a news service bureau from 1947 to July 8, 1950, applied for benefit on October 18, 1950 which was allowed. On March 19, 1951,

*Printed in Selected Decisions (ed. 1950) and not digested to date.

she refused an offer of permanent employment as a general helper with a dealer in peanuts in that upon being interviewed by the prospective employer, she had told him she expected to return to her former employment and as a consequence she had not been hired.

The claimant was disqualified for a period of six weeks for her refusal. The court of referees unanimously removed the disqualification. The local office advised that the claimant's former employer had stated that the claimant had applied on several occasions for re-employment but owing to the poor state of business he had been unable to offer her work and had advised her to look elsewhere.

Upon appeal, it was held that while the claimant's honesty and sincerity were not in doubt, she had been unemployed for eight months and had no definite promise from her previous employer that she would be re-employed and accordingly "she should have been willing to accept the job on a permanent basis". Therefore, she was rightly considered as not having had good cause for failing to accept the situation offered.

JURISPRUDENCE: Followed in CUB 740.

Appeal of the insurance officer allowed.

August 20, 1951 (Reversed)

CUB 724

VOLUNTARY LEAVING (Change of residence, Just cause not shown, Personal circumstances, Prospect of other employment not investigated beforehand, Working conditions—housing).

Section 41(1) of the Act (1946)

A 26-year-old married claimant applied for benefit on October 24, 1950 stating he had been employed by the National Film Board as a field representative from February 8 to October 16, 1950, when he separated by reason of his refusal to transfer from Winnipeg to Dauphin, Manitoba. The claimant gave as his reason that he could not find suitable domestic accommodation in view of the acute housing shortage there and his limited financial means.

The claimant was disqualified for a period of six weeks. In appeal to the court of referees, he contended he would have had to buy a house, which was beyond his means as he was presently paying for the car he had purchased for his work. At the hearing he gave testimony that his wife, a university graduate in interior designing, was supplementing the family income and could not find such work in Dauphin. The court of referees removed the disqualification.

Upon appeal, it was held that the question of transfer was an implied condition of the claimant's contract of service, the employer no doubt paying the customary moving costs, and that the claimant should not have refused to transfer when he had no assurance of any other work and, furthermore, when he was the sole breadwinner of the family inasmuch as the wife had been unable to earn enough to date to make her "non-dependent".

JURISPRUDENCE: Distinguished in CUB 803.

Appeal of the insurance officer allowed.

August 20, 1951 (Reversed)**CUB 725****CLAIMS MATTERS (Married women—separation for shortage of work).****CAPABLE OF WORK (Separation from employment in this connection).***Benefit Regulation 5A (1950)*

A 28-year-old claimant applied for benefit stating she had been employed as a teletype operator by a large department store from July 1949 until April 20, 1951, when her employment was terminated: when she returned after an absence for illness, her position had been filled by someone else.

Pursuant to Benefit Regulation 5A which had become effective on November 15, 1950 the claimant was disqualified for a period of two years from the date of her marriage on September 27, 1950. The court of referees unanimously maintained the disqualification but leave to appeal was granted on the grounds that it might be held that the immediate cause of the claimant's separation was the teletype operator shortage. The court noted that the claimant had become ill on March 26, 1951 and had gone to the hospital under the impression that she was being continued in her job; as operators were hard to find, her employer had to hire a permanent replacement. The claimant appealed further, stating that there had been a change in managership and that the new manager was well acquainted with the new employee and had wished her to continue in lieu of the claimant.

Upon appeal, it was held that the proximate cause of the claimant's separation was a shortage of work brought about by the hiring of a new employee, even though the remote cause was the claimant's illness and, accordingly, that the claimant should be relieved of the disqualification under the Regulation in question.

JURISPRUDENCE: Referred to in CUB 1110.

Appeal of the claimant allowed.

August 20, 1959 (Varied)**CUB 727***(French)*

ADJUDICATION PROCEEDINGS (Board of Referees: procedure, unanimous decision—finding of fact—varied, Evidence—employment history, Jurisdiction of adjudicating authority re aspect raised by adjudication).

AVAILABILITY (Domestic circumstances, Prospects of employment, Restricted as area, Voluntarily left—disqualification only for voluntary leaving).

VOLUNTARY LEAVING (Availability—joint disqualification, Domestic circumstances—continuing, Just cause not shown, Prospects of other employment not investigated beforehand).

Sections 27(1)(b) and 41(1) of the Act (1946)

A 30-year-old married claimant who had been employed as a wood cutter at \$10.00 a day at Baie Comeau, Que., from December 2, 1950 to December 20, 1950, applied for benefit in Rimouski on December 26 stating he had left his employment to return to Rimouski where his wife was ill. He submitted a medical certificate to the effect that his wife could not do her work nor take care of her family and needed someone to remain with her.

The claimant was disqualified for voluntary leaving without just cause, the insurance officer pointing out that the claimant had left similar employment the previous year at approximately the same time and for the same reason. The court of referees unanimously maintained the disqualification and imposed a further one for an indefinite period as not available for work as the claimant's chances of employment in Rimouski were nil.

Upon appeal, it was held that the claimant had failed to establish "that his presence at home was so necessary or urgent that he had to immediately leave his employment to return home, that such action was the only means of remedying the situation" and, accordingly, to show just cause for leaving. It was held, however, that as the claimant had on many occasions in the past found employment in Rimouski, which has a population of 7,000 and many industries, the disqualification as not available should not apply.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant allowed with respect to availability only.

August 22, 1951 (Reversed)

CUB 729

ADJUDICATION PROCEEDINGS (Commission's responsibility re claims procedures, Interpretation).

CLAIMS MATTERS (Dependency—husband and wife).

A 61-year-old married claimant who had been employed as a sales clerk in a departmental store from 1941 to February 1, 1951 when she was retired, had then applied for benefit claiming dependency rate in respect of her husband. The husband who was 67 years of age, had been retired himself after employment in a steel mill from 1926 to January 31, 1950; at that time he had claimed and received benefit at the dependency rate for 282 days. On February 2, 1951, within two or three days of his wife's claim, he applied for supplementary benefit at the dependency rate. The insurance officer refused both claims for benefit at the dependency rate; subsequently, the claimant became temporarily employed with the same employer from March 21, 1951 to May 1, 1951 and then filed a renewal claim, again at the dependency rate.

The insurance officer did not allow dependency rate but upon appeal, the court of referees unanimously did.

Upon appeal, it was held that marriage in itself does not create dependency within the meaning of the Act and that the claimant had failed to establish, in accordance with CUB 403, that "a continuity of relationship of dependency existed to such a degree that its genuineness could not remain doubtful".

JURISPRUDENCE: CUB 403q.* applied.

Applied in CUB 1007.

Appeal of the insurance officer allowed.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

August 22, 1951 (Affirmed)**CUB 731****ADJUDICATION PROCEEDINGS (Interpretation).****CLAIMS MATTERS (Dependency: domestic establishment—wholly or mainly maintained).***Section 31(3)(a)(iv) of the Act (1950)*

The claimant, a married woman, who had been employed as a general worker in a garment factory from January 2 to March 30, 1951 applied, upon being laid off, for benefit at the dependency rate in respect of her father, age 70, stating he was unemployed and she was his sole support.

The dependency rate was not allowed because the claimant had not proven that she maintained a self-contained domestic establishment and supported therein her father, either wholly or mainly. The court of referees unanimously allowed the dependency rate on the grounds that as the domestic establishment was maintained by both the claimant and her husband, who in turn both maintained their three children under the age of 16 years and the parents of the wife, either the husband or wife should accordingly be entitled to benefit at the dependency rate.

Upon appeal, it was held that the court of referees had taken a common sense view and its finding should not be disturbed. It was held that the insurance officer's contention whereby the dependency rate was not intended to apply to a person sharing in the maintenance of a domestic establishment, would mean that a married couple jointly supporting aging parents could not, either one, receive benefit at the dependency rate.

JURISPRUDENCE: Distinguished in CUB 810.

Appeal of the insurance officer dismissed.

August 24, 1951 (Reversed)**CUB 734****ADJUDICATION PROCEEDINGS (Board of Referees ultra vires, unanimous decision—reversed, Interpretation, Umpire—decisions).****AVAILABILITY (Capable of work, Duration of disqualification—indefinite, Pregnancy, Presumption, Proof—onus on the claimant, Prospects of employment, Restricted as to duration, Voluntarily left—disqualified only as not available).****CAPABLE OF WORK (Availability affected as a result, Pregnancy, Separation from employment in this connection).***Section 27(1)(b) of the Act (1946)*

A 22-year-old married claimant, registered for employment as a switchboard operator, filed a renewal claim for benefit on April 6, 1951 stating that she had been employed as a bank ledgerkeeper from January 15 to February 15, 1951 when she voluntarily left because of pregnancy.

The claimant was disqualified for an indefinite period as not capable of nor available for work. The claimant submitted a medical certificate dated April 12 to the effect that her confinement was expected about August 14, that she was in good health and able to work; the local office reported that employment prospects of switchboard operator were poor and that employment possibilities were better in the clerical field. The court of referees

unanimously removed the disqualification suggesting that the principles in CUBs 530 and 620 seemed to deprive a claimant of benefit in an arbitrary manner despite medical evidence.

Upon appeal, it was held there was no reason to modify the principles established in CUBs 530 and 620 it being doubted very much, as the claimant was in her fifth month of pregnancy, "that any employer would have hired her knowing that she would have been available only for a short period of time during which it was altogether likely that her capability for work would have been affected"; it was observed further that she had voluntarily left her employment elsewhere on November 15, 1950 and also on December 19, 1950 after one or two days' work in a government post office, separating because of sickness. The present case was distinguished from CUB 621 in which the claimant successfully rebutted the presumption she was not available, as she had to travel daily 16 miles each way by train over a rough road bed and had filed her claim after only one or two months of pregnancy.

JURISPRUDENCE: CUBs 530 and 620 applied and CUB 621 distinguished.

Applied in CUB 1129.

Appeal of the insurance officer allowed.

October 2, 1951 (Reversed)

CUB 741

ADJUDICATION PROCEEDINGS (Commission's responsibility re claims procedure, Interpretation).

CLAIMS MATTERS (Antedate, Dependency, Local office practices, Prescribed manner of making a claim and proof).

*Sections 27, and 36(6) of the Act (1946)
and Section 31 of the Act (1950)*

A 68-year-old married claimant who had been employed as a carpenter from January to November 23, 1950 when he was laid off because of winter shut-down, filed a postal application for benefit on November 29 in which he answered "no" to the question whether he was claiming benefit at the dependency rate and as a result was allowed benefit at the single rate only. On March 5, 1951, the claimant wrote to the local office to the effect that he appeared to be classified as a person without dependent whereas he had two dependents. A claim form (Dependency Certificate UIC 473) was thereupon sent the claimant who completed it and benefit was allowed at the dependency rate with respect to his wife but as of that date only. The claimant's solicitor protested.

The insurance officer referred the matter to the court of referees which unanimously decided (CUB 116) that the 21 days allowed for appeal had long since elapsed and there was no basis for antedating the claim. The claimant's solicitor then wrote to the local office's manager to the effect, among others, that the appeal period could only run "from the date on which the insurance officer's decision is communicated to the claimant"; furthermore, the claimant had assumed, in view of his lengthy contributions history, that the local office had an up-to-date record of the relevant dependency particulars, and the payment at the single rate had been queried shortly after the first cheque was received from the local office and

continuously since then; finally, it was argued the claimant's entitlement to the dependency rate had its roots in the statute and should not depend on a form, the wording of which was misleading.

Upon appeal, it was held that Section 36(6) of the Act which provided for antedating a claim, could in no way be construed as applying to cases like the present one where the claimant has established a benefit year, is in receipt of benefit at the single rate and requests to have it changed retroactively to the dependency rate. It was held rather that the answer was inferred in Section 27 of the Act wherein it is stated that the claimant was entitled to receive benefit at such rate as authorized by Section 31 which Section stipulates the daily rate of benefit for "a person without a dependent" and for "a person with a dependent"; as the fact of having a dependent entails, from that fact alone, the right to the dependency rate, a request for the retroactive payment of the dependency rate to a claimant who is in receipt of benefit at the single rate cannot be denied if such dependency is established in the prescribed manner.

JURISPRUDENCE: Followed in CUB 1260.

Appeal of the claimant allowed.

October 2, 1951 (Reversed)

CUB 745

ADJUDICATION PROCEEDINGS (Evidence—employment history, employment officer opinion).

UNEMPLOYED (Availability for full-time work, Engaged on own account, Farmers, Off-season unemployment, Subsidiary, Usual remuneration).

Sections 27(1)(a) (1946) and 29(1)(b) (1950) of the Act

and

Benefit Regulation 5(3), 1949

A 41-year-old claimant who owned and operated a 12-acre fruit farm in British Columbia, filed on January 1951, an application for benefit in which he stated that the gross return from the farm for the year 1950 amounted to about \$900. of which \$530. went for mortgage and interest, and \$400. for operating expenses; his orchard was not up to full production although he hoped to make farming his means of livelihood in the near future. He added that he had been employed by a local fruit co-operative as a packing-house worker at \$0.85 an hour from April 1948 to December 1948, April 1949 to December, 1949 and July 17th, 1950 to January 5th, 1951. The claimant stated he was available for work in the district but the local office reported there were no industries and the claimant's only opportunity of employment during the winter months would be in pruning local orchards.

The claimant was disqualified as not unemployed in that his main occupation was farming and he had insufficient contributions to qualify for benefit under off-season provisions. The court of referees unanimously affirmed the disqualification. The claimant was then re-employed at the co-operative from February 7th to February 21st, 1951 at which time he filed a renewal claim. He was disqualified for an indefinite period as unemployed and the court of referees unanimously upheld the disqualification, leave to appeal being granted however as a border-line case.

Upon appeal, it was held that, in determining whether the claimant's main employment was the operation of his farm, "many factors must be considered, the most important of which are the claimant's employment history, the number of contributions to his credit, the seasons during which they were earned and the extent of his participation in the operation of his farm". The claimant in the present case was primarily a farmer, his last three years showing a fairly consistent history of industrial work for the seasons during which a farmer is normally kept busy on his farm, and, therefore, a minor degree of participation in the operation of the farm. It was also held that as the work could be performed outside the ordinary working hours of his usual employment and his profits did not exceed \$2.00 a day, the claimant could not be deemed not be unemployed in the meaning of section 29(1)(b) of the Act. It was further held that while the opportunities for work during the winter in that district was not too good, the evidence showed the claimant did work a few weeks after filing claim and expected to be again employed in industrial work in the near future and accordingly it would not be fair to disqualify him as not available for work.

JURISPRUDENCE: Applied in CUBs 894q., 925 and 1551.

Appeal of the claimant allowed.

October 3, 1951 (Affirmed)

CUB 748
(French)

ADJUDICATION PROCEEDINGS (Interpretation).

AVAILABILITY (Domestic circumstances, Prospects of employment, Restricted as to area—Magdalen Islands, Voluntarily left—disqualification only as not available).

VOLUNTARY LEAVING (Availability—disqualified as not available only, Domestic circumstances—continuing, Prospects of employment not investigated beforehand, Tantamount to voluntary leaving, Transportation and travel as cause).

Sections 27(1)(b) and 41(1) of the Act (1946)

A 46-year-old married claimant, living in the Magdalen Islands, claimed benefit on December 1st, 1950, stating he had been employed as a labourer in Clarke City, Que. by a pulp manufacturer, from July 3rd, 1950 to November 20th, 1950, when he was laid off because of a shortage of work. The employer reported that the claimant's contract had terminated but that he could have continued to work till January 1951, and even later if he had chosen to stay.

The claimant was disqualified for six weeks for voluntary leaving and for an indefinite period as not available under section 27(1)(b) of the Act, on the ground that, by withdrawing to a remote area his chances of employment were not good. The claimant stated that the company had chartered a boat to take home the workers from the Magdalen Islands just before the close of the season. The court of referees unanimously maintained the disqualifications.

Upon appeal, it was held that "it is not the intent of the Act to allow benefit to a person who, like the claimant, holds suitable employment, leaves it voluntarily and withdraws to a remote area where he cannot reasonably expect to find work". Otherwise the inhabitants of the Magdalen

Islands would be using the Act as a medium of assistance or subsidy although it was common knowledge there was an urgent need for labourers on the whole of the North Shore; the claimant himself could have continued to work even after his own employer had ceased operations.

JURISPRUDENCE: Distinguished in CUB 1102.

Appeal of the claimant dismissed.

October 5, 1951 (Affirmed)

CUB 751
(French)

LABOUR DISPUTE (Existence of labour dispute, Insistence and resistance, Misconduct, Stoppage of work, Termination of stoppage, Union existence).

Sections 2(1)(d) (1940) and 39 (1946) of the Act

The claimant had been employed as a weaver in a textile mill from May 1950 to October 2, 1950 when he lost his employment by reason of "a lock-out due to a labour dispute". The collective agreement between the employer and a shop union was due to expire October 21, 1950. In August 1950 the United Textile Workers of America, affiliated with the American Federation of Labour, began organizing and eventually applied for certification, the provincial Board on September 26, ordering a vote for the purpose. On October 2, 1950, the union in question called a meeting of the interested workers at 2:00 p.m.; at 2:20 p.m. the superintendent gave notice of dismissal for those who would not resume work immediately, whereupon some employees left the plant and others belonging to a later shift failed to report, a total of about 70 of the approximately 323 employees in the plant.

The claimant was disqualified under Section 39 and the court of referees unanimously maintained the disqualification.

Upon appeal, it was held that the salient fact in the case was the insistence of the union in question in being recognized as the plant's bargaining agent and the employer's resistance thereto, which made it evident that the employer required as a condition of employment that his employees abstain from membership in the affiliated union, this in itself being the essence of a labour dispute within the meaning of the Act. Furthermore, it was held there was a stoppage inasmuch as production dropped more than 25% by reason of some 70 employees ceasing to work. Finally, it was held that there was no valid reason to disturb the insurance officer's finding that the stoppage of work ended on November 24, 1950 inasmuch as the production as of that date was 85% of normal and the number of employees at work was 95% of what it was on October 1, 1950.

JURISPRUDENCE: Followed in CUBs 1446, 1447-48, and 1542, and referred to in CUB 1627.

Appeal of the claimant's union dismissed.

October 31, 1951 (Affirmed)**CUB 755**

VOLUNTARY LEAVING (Change of occupation as cause—military service, Duration of disqualification, Extenuating circumstances, Just cause not shown, Proof—onus on claimant, Prospects of enlistment not fully investigated beforehand).

Section 41(1) of the Act (1946)

A 20-year-old single claimant who had been employed as a grocery clerk in Vernon, B.C. from June 12, 1948 to June 16, 1951, claimed benefit on June 22, stating she had voluntarily left to enlist in the RCAF, but, as per letter from the RCAF had not been accepted on medical grounds. The claimant further stated on July 12 that before leaving she had requested a two days' leave of absence to report for medical examination but the employer had requested her to postpone it a week which she felt unable to do so because she "had received (her) travel warrant from the RCAF and it was only good to a certain date"; the claimant also submitted a medical certificate dated July 7 to the effect she was not fit to do work that required her to be on her feet.

The claimant was disqualified for a period of three weeks. The court of referees unanimously maintained the disqualification on the grounds there must have been considerable doubt in the claimant's mind as to her acceptance by the RCAF in view of her physical condition and she should have delayed her leave for the short period required.

Upon appeal, it was held that a claimant has just cause within the meaning of the Act for voluntarily leaving employment in order to undergo examinations with a view to enlisting in the Armed Forces "if he is denied by his employer the necessary leave of absence to do so" but that in the present case there was not just cause as there is no evidence that the claimant had to report immediately or that the tests could not have been postponed, the Services' practice of cautioning potential recruits against premature abandonment of their employment being noted. Finally, the evidence suggests that the claimant should have suspected at least a possibility she could not meet the requirements. The shorter period of disqualification, three rather than six weeks, seems to have taken into account the claimant's fine motive.

JURISPRUDENCE: Followed in **CUB 1532**.

Appeal of the claimant dismissed.

October 31, 1951 (Reversed)**CUB 758***(French)*

UNEMPLOYED (Availability for full-time work despite, Family enterprise, Retired from regular employment, Usual remuneration).

Section 27(1)(a) of the Act (1946)

A 65-year-old claimant from St. Jean, Que. who had been employed as a filer by a manufacturer of wooden articles from 1942 to December 30, 1949, drew 299 days benefit on regular claim from January 13, 1950 until expiry on January 8, 1951, and then filed a claim for supplementary benefit which was allowed. On February 16, 1951, investigation by the local enforcement officer disclosed that the claimant had been and was

managing a valet service shop in Montreal, owned by his son. The claimant completed a written statement to the effect that he had been managing the shop since June 26, 1950 when his daughter-in-law had been killed in an accident and his son had gone to Windsor, Ontario; the claimant's duties consisted of attending to the business including service and the current accounts, from morning to evening; in return, he withheld from the cash money to pay his meals and his transportation once or twice a week to St. Jean, P.Q., twenty-five miles away, where he resided.

The claimant was disqualified as not unemployed. The court of referees unanimously removed the disqualification on the grounds the case was similar to that of a person who took care of the children or home of a son.

Upon appeal, it was held that the fact of being available for work, as contended by the claimant and accepted by the court of referees, was not conclusive evidence of unemployment nor is the apparent lack of remuneration in a case of a claimant who follows an occupation which is ordinarily remunerated, the evidence indicating that the claimant performed the normal work of a manager of a business establishment and, in return, received at least his room and board.

JURISPRUDENCE: Followed in CUB 1146.

Appeal of the insurance officer allowed.

November 9, 1951 (Reversed)

CUB 760

ADJUDICATION PROCEEDINGS (Jurisdiction of adjudication authorities re legislation).

LABOUR DISPUTE (Attributable to labour dispute, Conditions of employment, Existence of labour dispute, Insistence and resistance, Merits irrelevant, Stoppage of work).

Section 39 of the Act (1946)

The claimant who had been employed as a contract miner in a Nova Scotia coal mine from 1949 to February 5, 1951, when he was put on short-time work, filed a short-time claim for benefit on February 9. On April 2, a delegation from the claimant's union went to see the manager of the mine to find out why the contract miners had been paid at a daily rate of \$8.02 per shift for the previous week instead of on a tonnage basis as provided for in the contract; upon the manager refusing any discussion, the men did not work that day and the following day the manager refused to let the contract miners go down into the mine. On April 18, after negotiation, the miners agreed to go back to work at the daily rate of \$8.90 instead of \$8.02. The men worked three days until April 23 when they were called to the office and told to stay in the mine and clean up the wall regardless of the time required; the men refused contending that the contract called for an 8-hour day except for an emergency.

The claimant was disqualified under Section 39 of the Act and the court of referees unanimously affirmed the disqualification.

Upon appeal, it was held that there was clearly a dispute between management and employees, first, on the question of wages and later on the hours of work, the fact that the stoppage of work coincided with the beginning of the dispute being immaterial to the issue as the absence of negotiations before stoppage is not conclusive evidence that the said stop-

page is not due to a labour dispute. It was further held that the fact there was a breach of contract by the employer, that the proposed conditions of work were unsuitable as well as contrary to the provincial law was irrelevant as the statutory authorities under the Act are not concerned with the merit of a labour dispute nor is it within their province to determine whether or not a statute has been or is likely to be violated. Finally, it was held that the stoppage did not constitute a voluntary separation 'en masse' as there was no final separation or severance of the relationship between the employer and the employees contemplated, the employee maintaining contact with the employer either personally, through a committee or his union representative, and intending to return to work as soon as the differences were adjusted, the claimants rather withdrawing from work by concerted action without taking any steps to finalize their separation.

JURISPRUDENCE: Applied in CUBs **1050** and **1627q**.

Appeal of the claimant's union dismissed.

November 9, 1951 (Reversed)

CUB 761

LABOUR DISPUTE (Direct interest, Extension of labour dispute, Grade or class, Participating, Proof, Relief, Sympathetic strike, Union membership, Working conditions).

Section 39 of the Act (1946)

The claimant had been employed as a bratticeman in a Lethbridge colliery since 1935 when on October 23, 1950 the contract miners, numbering about 90 out of a working force of 350, refused to work because the employer had refused the union's demand that they be provided with car pushers. The employer then sent the other employees home, including the claimant, as there was no work. On October 29, a meeting of the union decided on a general strike which took place the next day.

The claimant was disqualified from October 23 to October 31, 1950. The court of referees unanimously affirmed the disqualification.

Upon appeal, it was held on the basis of the union's submission that on the only question to decide was the entitlement to relief provided by Section 39(2) for the period from October 23 to October 28. It was held that the claimant was not directly interested in the dispute which related only to the terms and conditions of employment of the contract miners, the claimant being interested to the extent of his loss of work and of the possibility of the hours or wages being reviewed in the light of settlement reached but this not being the kind of interest envisaged by Section 39(2). It was further held that the claimant was not a participant in the dispute inasmuch as he made no positive or negative act participation and the only evidence was union membership which is not in itself conclusive, the theory of agency having to go beyond that mere fact and it being noted that the local union had called a special meeting for the purpose of calling a general strike, thus inferring that the union officials had no authorization to act for the whole membership.

It was further held that "there are innumerable ways of grading or classifying workers and the basis upon which the extension of the terms 'grade or class' must be fixed, relates not only to the nature of the occupation but also to the nature of the issue in dispute". The argument that as the claimant's functions as well as that of the other mine workers could

be assimilated to a part of an interdependent 'production line', the term "grade or class" should be extended to the whole group of workers, was rejected as setting up the rule that the nature of the employing establishment determines the class of workers employed there. The intention of the legislator in using the terms 'grade or class' was as stated in British Empire Decision BU-608; "to exclude from benefit, in addition to the workers who are directly interested, those who are indirectly interested by reason of the terms and conditions of their employment being the same as the persons who are directly interested".

JURISPRUDENCE: B.U. 608q. applied.

Applied in CUBs **1419** and **1591**, and distinguished in CUB **1615**.

Appeal of the claimant's union allowed.

December 4, 1951 (Affirmed)

CUB 762

LABOUR DISPUTE (Attributable to labour dispute, Conditions of employment, Direct interest, Existence of labour dispute, Union rights of individual).

Sections 2(1)(d) (1940), 39 and 43 of the Act (1946)

The claimant had been employed as a carpenter by a building contractor in Nova Scotia at \$1.40 an hour from May 8 to May 31, 1951 when he lost his employment by reason of a labour dispute between his union and the local Association of Building Contractors over the renewal of a collective agreement which expired on May 31. The union had informed the Association in February 1951 of its demand for an increase in the carpenters' pay to \$1.70 an hour. Pursuant to negotiations, a number of contractors had signed an agreement providing an increase but not the claimant's employer, a stoppage of work taking place at his premises on June 1, 1951.

The claimant was disqualified under Section 39 of the Act and the court of referees unanimously maintained the disqualification.

Upon appeal, it was held that there was evidence of disagreement between the union and the employer on the question of wages and, therefore, in connection with the terms and conditions of employment, and this was the essence of a labour dispute under the Act. It was further held that Section 43 of the Act which allowed an unemployed person to refuse an offer of employment which would affect his rights to become, continue to be or refrain from becoming, a member of an association of workers, did not apply to the case of an insured person who refused new terms of employment and goes on strike, the present case being accordingly distinguished from CUB 644 in which the claimant had been unemployed when he was offered the employment which he refused.

JURISPRUDENCE: CUB 644 distinguished.

Applied in CUB **1627**.

Appeal of the claimant's union dismissed.

December 4, 1951 (Affirmed)

CUB 765

AVAILABILITY (Restricted as to hours, Student: not directed and presumed non-availability un rebutted, course's compatibility with usual working hours, Voluntary leaving: joint disqualification).

Sections 27(1)(b) and 41(1) of the Act (1946)

A 20-year-old single claimant who had been employed as a pantryman in the dining car service of a railway company from May 21st to September 15th, 1951, claimed benefit on September 25th, 1951, stating he had been "dismissed on request", as he expected to be placed on the spare board shortly and wanted to return to school. The claimant added later that he was attending a business course which had started on October 3rd, 1951, although he stated he would leave the course to accept any suitable offer of employment.

The claimant was disqualified six weeks for voluntary leaving and an indefinite period as not available. The claimant appealed the latter disqualification which a majority of the court of referees maintained however.

Upon further appeal, the disqualification was upheld although it was pointed out that a different view of the case might have been taken if the claimant had been laid off because of lack of work and had taken up a business course rather than remain idle. "His availability for work would then have been decided in the light of whether his hours of attendance thereat would have prevented him from accepting suitable employment and whether he would have been ready and willing to abandon the course immediately suitable employment became obtainable."

JURISPRUDENCE: Applied in CUB 1057 and distinguished in CUB 1154.

Appeal of the claimant dismissed.

December 4, 1951 (Affirmed)

CUB 766

ADJUDICATION PROCEEDINGS (Credibility, Evidence—statements before disqualification).

AVAILABILITY (Efforts to find work, Intention of claimant, Pregnancy of claimant, Presumption, Proof, Separated from regular employment—employer's rule, Temporary non-availability).

CAPABLE OF WORK (Availability affected, Pregnancy, Proof, Suitability for employment likely to be offered).

Section 27(1)(b) of the Act (1946)

A 26-year-old married claimant who had been employed as an airline agent from 1943 to December 31st, 1949, when her employment terminated because of the company's policy against retaining married women in its employ, drew benefit from January 9th, 1950, first on regular claim and then on supplementary benefit till March 31st, 1951, except for the period from January 22nd, 1951 to January 27th, 1951, when she declared herself not available for work. The local office discovered early in April 1951 that the claimant had given birth to a child in January, 1951, on January 20th, in fact. The claimant submitted a medical certificate that during the time she was pregnant she was able to do light work.

The claimant was disqualified as not being capable or available during the six weeks preceding and the six weeks following January 20th. The majority of the court of referees maintained the disqualification.

Upon appeal, it was held that while there was no rule in the Act or Regulations, there was a presumption during the six weeks before and after birth that the claimant was not capable or available, a presumption which the claimant had not rebutted, her sincerity being doubtful in view of having claimed and received benefit on the very day on which she gave birth and there being no evidence that during the 15 months she collected benefit she had made any individual effort to find work.

JURISPRUDENCE: Distinguished in CUB 999 and followed in CUB 1505.

Appeal of the claimant dismissed.

December 6, 1951 (Affirmed)

CUB 772

ADJUDICATION PROCEEDINGS (Interpretation).

CLAIMS MATTERS (Married Women's Regulation: voluntary leaving to follow husband not reason solely and directly connected with her employment).

VOLUNTARY LEAVING (Change of residence, Just cause shown, Married woman leaving the area, Personal circumstances).

Section 41(1) of the Act (1946)

and

Section 5A of Benefit Regulation (1951)

A 23-year-old claimant who had been employed in Hamilton, Ontario, as a dental assistant since 1947 and was married on July 21, 1950, separated on June 30, 1951 and filed a claim for benefit on August 21, 1951, stating she had voluntarily left her employment to follow her husband who had been transferred to Montreal.

The claimant was disqualified under Benefit Regulation 5A, as amended July 1, 1951. The court of referees unanimously affirmed the disqualification but leave to appeal was granted the claimant by reason of CUB 612.

Upon appeal, it was held that Benefit Regulation 5A goes much further than Section 41(1) of the Act, in recognizing as just cause for voluntary leaving those reasons only which are solely and directly connected with the employment of the claimant, as distinguished from the legal and moral obligation of a wife to follow her husband, recognized in CUB 612 as just cause under Section 41(1). In the present case, the leaving was for purely personal reasons whereas the Regulation requires that the employment itself be directly involved, for example, when the employer has decided to make unreasonable changes in the contract of service or the claimant who leaves because the particular kind of work has become injurious to his health.

JURISPRUDENCE: CUB 612 distinguished.

Applied in CUBs 1045, 1073 and 1091.

Appeal of the claimant dismissed.

December 6, 1951 (Affirmed)

CUB 773

ADJUDICATION PROCEEDINGS (Interpretation).**CLAIMS MATTERS (Married women's Regulation: voluntary leaving to follow husband not reason solely and directly connected with her employment).****VOLUNTARY LEAVING (Change of residence, Just cause shown, Married woman leaving the area, Personal circumstances).***Section 41(1) of the Act (1946)**and**Section 5A of Benefit Regulations (1950, 1951)*

A 23-year-old claimant who had been employed as a stenographer in Winnipeg since October 6, 1947, married on April 29, 1950 and separated on July 7, 1951, filed a claim on July 31, 1951 in Port Arthur, Ontario, giving for reason of separation her husband's transfer.

The claimant was disqualified for a period of two years since the beginning of her marriage. The court of referees unanimously affirmed the disqualification but recommended that the case be referred to the Umpire to reconcile CUBs 45, 612 and 640 with the new Regulation.

Upon appeal, it was held that just cause for the purposes of the Regulation, unlike the purposes of section 41(1) of the Act, must be for reasons solely and directly connected with the claimant's employment, for instance, unreasonable changes in the contract of service or work injurious to health.

JURISPRUDENCE: Followed in CUB 777q. and 845q.

Appeal of the claimant dismissed.

December 6, 1951 (Affirmed)

CUB 775

ADJUDICATION PROCEEDINGS (Interpretation).**CLAIMS MATTERS (Married Women's Regulation: voluntary leaving because of eye trouble—just cause).***Section 5A of Benefit Regulation (1951)*

A 19-year-old claimant who had been employed as a bank ledger keeper since September, 1950, married on April 17th, 1951, and separated from employment on July 14th, 1951, claimed benefit on August 3rd, 1951, stating she had left on medical advice because of eye trouble.

The claimant was disqualified for a period of two years because she had not established that she could meet any one of the conditions stipulated in the Regulation. She submitted a letter from her optometrist stating that she was extremely near-sighted and a vocation not requiring detailed work would be advisable. The court of referees unanimously removed the disqualification, noting that the claimant had registered for employment as a house-worker.

Upon appeal, it was held that the condition laid down in paragraph (b) (iii) of subsection (1) of Regulation 5A was met in the present case. The claimant's registration for employment in house-work was consistent with the evidence which she adduced in support of her contention that work of the nature she performed at the bank had become unsuitable for her.

JURISPRUDENCE: Distinguished in CUB 1074 and referred to in CUBs 1362 and 1408.

Appeal of the insurance officer dismissed.

January 4, 1952 (Affirmed)

CUB 779
(French)

CAPABLE OF WORK (Married Women's Regulation, Separation from employment in this connection).

CLAIMS MATTERS (Married Women's Regulation: voluntary leaving—pregnancy not reason solely connected with employment).

VOLUNTARY LEAVING (Capable of work—pregnancy, Just cause—shown).

Benefit Regulation 5A (1951)

A 23-year-old claimant who was married on May 19, 1951, applied for benefit on September 26 stating that she had left her employment as an accounting machine operator on September 7 because she was expecting a baby in April 1952 and thought she would seek lighter work.

The claimant was disqualified for the period of two years from the date of her marriage and a majority of the court of referees affirmed the disqualification.

Upon appeal, it was held that "a woman who leaves her employment because she has become pregnant does not establish just cause 'for reasons solely and directly connected with her employment' within the meaning of Benefit Regulation 5A". In order that, that condition be met, "the cause of the incapacity, indisposition or aggravation must, in its source and in its effects, be exclusively and objectively connected with the nature of the work; in other words, the incapacity, indisposition or aggravation must have taken place solely because and in the course of the work".

JURISPRUDENCE: Followed in CUBs 817, **845**, 1123, 1169 and 1185, applied in CUBs 866 and **1127q.** and referred to in CUB 1408.

Appeal of the claimant dismissed.

February 12, 1952 (Reversed)

CUB 782

AVAILABILITY (Domestic circumstances, Efforts to find work, Prospects of work, Restricted to part-time work, Suitable employment refused—joint disqualification).

SUITABLE EMPLOYMENT (Availability—joint disqualification, Change as regards conditions of work—part-time, Domestic circumstances, Duration of unemployment—long, Good cause not known, Prospects of other work).

Sections 27(1)(b) and 40(1)(a) of the Act (1946)

A 46-year-old married claimant who had been employed on a part-time basis by a rubber company as a power machine operator from June 1950 to May 21, 1951, refused on September 19, 1951 an offer of full-time employ-

ment in the same capacity with another rubber company. She gave as her reason that she could not accept full-time work because she had to be home to prepare meals for her child and a boarder. The local office reported there was no part-time work, to their knowledge, available in the area at the time.

The claimant was disqualified for six weeks for her refusal and for an indefinite period because she was not available for work. A majority of the court of referees removed the disqualifications.

Upon appeal, it was held that the present case was amply covered by CUBs 476 and 486 dealing with part-time workers who have domestic responsibilities. CUB 486 was quoted to the effect that the Commission is not estopped, by having accepted contributions for part-time employment, from denying benefit to a claimant who would accept only part-time work, and that the claimant's right to insist on his usual pattern of work would depend upon the length of his unemployment, the possibilities of obtaining work of such a pattern in the district, and on the other circumstances of the case, the claimant being obliged with the passage of time to adjust her domestic or personal affairs to meet the exigencies of the labour field. In the present case the claimant had been unemployed for nearly four months and work of the pattern she desired had not been found either by herself or by the local office on her behalf.

JURISPRUDENCE: CUBs 476 and 486q. applied.

Distinguished in CUB 1587 re prospects.

Appeal of the insurance officer allowed.

February 12, 1952 (Affirmed)

CUB 785

ADJUDICATION PROCEEDINGS (Board of Referees: claimant present, examination of witness).

VOLUNTARY LEAVING (Duration of disqualification, Extenuating circumstances, Grievances not raised, Just cause not shown, Working conditions).

Section 41(1) of the Act (1946)

A 59-year-old married claimant who had been employed as a pressman in a lithographing plant from June 25 to August 21, 1951, applied for benefit stating he lost his employment because of his lack of experience in that type of work. The employer reported that the claimant had had some difficulty in getting along with the head pressman who, apparently, thought the claimant was not qualified for the job. The claimant stated he had been advised by his union representative to leave under the circumstances.

The claimant was disqualified for a period of four weeks. The court of referees unanimously maintained the disqualification.

Upon appeal, it was held that the claimant must show that his conditions of work were highly unsatisfactory and that notwithstanding his representations, they were not improved. In the present case the court of referees, after having heard representatives of the claimant and of the employer, had unanimously concluded that the claimant had not proved he had taken the necessary steps to have his grievance remedied or that the

grievance was of such nature that he could not reasonably continue in his employment and it was held there was no reason in the evidence to interfere with this finding. It was held further that due consideration had been given by the insurance officer to the extenuating circumstances of this case.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant's union dismissed.

February 13, 1952 (Affirmed)

CUB 792

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: claimant present, unanimous decision—credibility, Evidence: benefit of doubt, weight of evidence).

CLAIMS MATTERS (Married Women's Regulation: voluntary leaving or shortage of work).

Benefit Regulation 5A (1951)

A 21-year-old claimant who was married on June 2nd, 1951, applied for benefit on August 13th, stating she had been employed as a general helper in a home appliance factory from September 1950 to May 22nd, 1951. She stated that on leaving to get married on June 2nd, it was agreed with her foreman that she would return to work after marriage, but she was told at that time, on July 30th, that business was too slack at the moment to rehire her.

The claimant was disqualified for a period of two years from the date of her marriage under Benefit Regulation 5A, which had become effective on July 1st, 1951. The court of referees unanimously found that the claimant had obtained leave of absence to get married and had lost her employment because of the company's inability to take her back because of a shortage of work. To the local office query, the employer replied, confirming the shortage of work but also stating that the foreman did not have the authority to promise the claimant she would be rehired.

Upon appeal, it was held that the facts of this case were not too clear or precise and there was no basis for changing the unanimous decision of the court of referees which had had the opportunity of hearing the claimant.

JURISPRUDENCE: Referred to in CUB 1110.

Appeal of the insurance officer dismissed.

February 13, 1952 (Affirmed)

CUB 793

(French)

UNEMPLOYED (Availability for full time work, Family enterprise, Full time work, Separated from regular employment, Subsidiary, Usual remuneration, Voluntarily left previous employment).

Section 27(1)(a) of the Act (1946)

A 31-year-old married claimant who had voluntarily left his employment as a radio station operator from 1948 to January 31, 1951, ostensibly because his working hours had been increased from 42 to 52 a week, was discovered on August 24, 1951 in the course of a claim for benefit

filed on February 7th, 1951, to be working in a boys' clothing store, which he declared his wife had been operating since March 17th, 1951. The claimant stated that while waiting to obtain suitable employment, he had worked in the store as a general helper every day, but at irregular hours, opening the store two or three mornings a week and looking after it while his wife did her housework and also replacing her in the store at lunch time; he added that he received no remuneration for his work.

The claimant was disqualified as not unemployed. In connection with the claimant's appeal, both the claimant's wife and brother wrote to the local office, stating that the latter was helping in the business as well. The majority of the court of referees affirmed the disqualification.

Upon appeal, it was held that the claimant had failed to prove that his activity was so minor in extent that he could be considered unemployed, as, irrespective of who owns the business or whether he worked for his wife and brother, the evidence indicated that he took an active part in it during ordinary working hours and consequently, followed an occupation for which it is customary to receive remuneration. Moreover, it was held that the claimant could not be held to be unemployed simply because he states he is available for work specially when his availability, as in the present case, is not clearly established. Finally, it was held that a person who is desirous of working should make personal efforts in that respect, especially when he has a physical disability, rather than simply rely on the local office alone.

JURISPRUDENCE: Applied in CUB 1063 and 1179q. and followed in CUB 1146.

Appeal of the claimant dismissed.

March 11, 1952 (Reversed)

CUB 796
(French)

CLAIMS MATTERS (Married Women's Regulation: voluntary leaving—refusal of wage increase not just cause).

VOLUNTARY LEAVING (Just cause not shown, Prospects of other employment not investigated beforehand, Working conditions).

Section 41(1) of the Act (1946)

and

Section 5A of the Benefit Regulation (1951)

A 23-year-old claimant who was married on September 15th, 1951, filed a claim for benefit on October 19th, 1951, stating she had been employed as a kitchen helper in a cafeteria from 1945 to September 10th, 1951, when she was dismissed because she had requested an increase in wages. The employer reported that the claimant had left to get married and stated later that an increase of wages from \$16.25 a week (plus two meals a day) had been recommended but not yet approved.

The claimant was disqualified under Benefit Regulation 5A, but the court of referees unanimously removed the disqualification on the ground the claimant had established just cause for reasons solely and directly connected to her employment.

Upon appeal, it was held that if the claimant had left (five days prior to her marriage) because she was getting married, it was surely for a personal reason and if she left because she was refused an increase in wages, she did not establish just cause, this phrase having the same meaning in Benefit Regulation 5A as in section 41(1) of the Act, it having been stated in many previous decisions that: "A desire for an increase in remuneration and a desire for promotion are not alone sufficient to establish just cause. The claimant must also show that some attempt has been made to find other employment and that there was a reasonable prospect of obtaining that other employment".

JURISPRUDENCE: Applied in CUB 1073.

Appeal of the insurance officer allowed.

March 14, 1952 (Affirmed)

CUB 806

ADJUDICATION PROCEEDINGS (Board of Referees: familiarity with local situation, unanimous decision—finding of fact, Chairman of Board of Referees, Umpire, appeal to).

AVAILABILITY (Prospects of employment, Restricted to part-time work, Student—not directed and presumed non-availability unrebutted—course's compatibility with usual working hours—intention re work, Voluntarily left—ignored by insurance officer).

Section 27(1)(b) of the Act (1946)

A 26-year-old married claimant who had worked as a clerk in a drug store since May 1, 1951, six days per week, nine hours per day on broken shift, and the previous year while attending school had been employed at the same place part-time from 20 to 30 hours a week, voluntarily left on September 12, 1951 to resume his studies in pharmacy at the local university. On November 12, the local office reported it had no orders from employers to fit the claimant's pattern of availability, after 6:30 p.m. Monday and Tuesday, 5:30 p.m. Wednesday and Friday, 1:30 p.m. Thursday and all day Saturday and Sunday.

The insurance officer referred the case to the court of referees which disqualified the claimant for an indefinite period as not available for work. Leave to appeal was granted by the Chairman of the court of referees.

Upon appeal, it was held that while the claim was allowed originally, no doubt because some of the claimant's contributions had been for part-time work and because there was a possibility of similar work, the later disqualification by the court, which is familiar with the local conditions, was in order when it appeared it would be very difficult to find the claimant part-time work of the pattern he desired and the claimant was in no position to take full-time employment. In this regard, the claimant's case was held to be in no way different from that of claimants who, for health or domestic reasons, cannot accept full-time employment. CUB 486 was quoted to the effect that the commission was not estopped from denying benefit simply because it had accepted contributions from the claimant for part-time work; the claimant's right to insist on such a pattern would

depend upon the length of his unemployment, the possibilities of such part-time work and other circumstances, the claimant being obliged to adjust his domestic or personal affairs to meet the exigencies of the labour field when employment of the kind he previously followed cannot be found.

The Umpire also drew the attention of the chairman of the court of referees to Section 59(2) of the Act requiring the statement of the grounds on which leave to appeal is granted, to be made in writing.

JURISPRUDENCE: CUB 486 applied. Applied in CUB 898 and followed in CUB 1057.

Appeal of the claimant dismissed.

April 9, 1952 (Affirmed)

CUB 807

ADJUDICATION PROCEEDINGS (Interpretation, Jurisdiction of adjudicating authority re aspect not brought to appeal).

EARNINGS (Reinstatement damages, Usual remuneration).

UNEMPLOYED (Usual remuneration).

Section 29(1)(a)(ii) of the Act (1946)

A 50-year-old married claimant applied for benefit on January 5, 1951, stating he had been employed as a repairman with a motor rebuilding firm since 1946 when he had been temporarily laid off on account of shortage of work; the claim was allowed. Subsequently the claimant referred the employer's promise to rehire him to his union and a provincial board of arbitration decided on September 10, 1951 that the claimant should be paid three months' wages, no definite period being specified, on the grounds he should have been discharged outright rather than assured from time to time that the lay-off was only temporary.

The claimant was disqualified from January 5 to April 5, 1951, because he was deemed not to be unemployed during this period. The court of referees unanimously removed the disqualification on the grounds the monies were paid in view of wrongful dismissal.

Upon appeal, it was held that the present case could be distinguished from CUB 137, referred to by the insurance officer, in which the claimant has been reinstated with full back pay. It was held that the claimant was paid the monies as compensation for a period of eight months' unemployment and accordingly such monies were neither remuneration, on the one hand, nor compensation substantially equivalent to remuneration, on the other. It was held that certain statements of the claimant and his representative left some doubt as to his availability but this question was not before the Umpire for decision.

JURISPRUDENCE: CUB 137* distinguished.

Followed in CUBs 1155 and 1156.

Appeal of the insurance officer dismissed.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

April 22, 1952 (Varied)

CUB 816

VOLUNTARY LEAVING (Duration of disqualification, Extenuating circumstances, Grievances not raised, Just cause not shown, Prospects of employment not investigated before hand, Working conditions).

Section 41(1) of the Act (1946)

A 22-year-old single claimant who had been employed as a bookkeeper for a farm machine company since May 11, 1948, voluntarily left on December 31, 1951 because he felt he did not obtain suitable advancement, due to his strained working relationships with the secretary-treasurer of the company.

The claimant was disqualified for a period of six weeks and a majority of the court of referees maintained the disqualification. The dissenting opinion was on the grounds there was evidence of a strained relationship and abusive language directed at the claimant who was a Japanese-Canadian, and also some evidence for the claimant's feeling that he has little chances of promotion with that employer, whereas the secretary-treasurer admitted that the claimant was very efficient in his duties except for some inattention to details.

Upon appeal, it was held that the claimant had failed to prove that his conditions of work were highly unsatisfactory and, notwithstanding his representations, were not improved. It was held that, failing that, the claimant should have assured himself of another position before separation. Finally, it was held that as the claimant appeared to be an earnest and sincere young man and there may have been some grounds for him to feel that he had been harshly treated, the disqualification should be reduced to four weeks.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant dismissed but disqualification reduced to four weeks.

May 20, 1952 (Affirmed)

CUB 819

AVAILABILITY (Circumstances beyond claimant's control or deliberately created, Efforts to find work, Intention of claimant, Pregnancy, Prospects of employment, Restricted—generally).

Section 27(1)(b) of the Act (1946)

A 27-year-old married claimant, who had been employed by a barrister as a stenographer from March to October 20, 1951, was in receipt of benefit thereafter when on February 27, 1952, the local office reported that the claimant who expected to be confined on or about May 2, 1952 was in so obvious stage of pregnancy that she could not possibly be referred to employment and, furthermore, had not been looking for work for the past six weeks.

The claimant was disqualified indefinitely on the grounds that her physical condition had so restricted her sphere of employment as to render her not available. The court of referees unanimously maintained the disqualification.

Upon appeal, it was held that a claimant whose obvious condition makes it impossible to place her in employment cannot be considered as available for work. This was held to be a corollary of the principle laid down in CUB 430:

'Availability for work is primarily a subjective matter which must be considered in the light of a claimant's intention and mental attitude towards accepting employment. Viewed objectively, it might be determined by a claimant's prospects of employment in relation to a certain set of circumstances beyond his control or which he has deliberately created.'

JURISPRUDENCE: CUB 430 applied.

Distinguished in CUB 999.

Appeal of the claimant dismissed.

May 20, 1952 (Affirmed)

CUB 820

CLAIMS MATTERS (Married women—voluntarily left for pregnancy or incapacity to work, not for reasons solely connected with her employment).

VOLUNTARY LEAVING (Capability for work—pregnancy, Just cause not shown).

Benefit Regulation 5A (1951)

A 21-year-old claimant who was married on July 31, 1951 and who had been working as a sales clerk in a retail grocery since April 1948, had left work on November 24, 1951, she stated, because of illness from flu; when she returned to her employment early in December the employer refused to take her back on the grounds that her work had slowed up and he had replaced her.

The claimant was disqualified under Benefit Regulation 5A. The claimant appealed, stating that the first reason she gave was not correct and that her real reason was that her condition "made it difficult to carry on". The court of referees maintained the disqualification by majority decision.

Upon appeal, it was held that whether the claimant was discharged because she was no longer able to do her work or voluntarily left because of her condition, she did not meet the requirements for relief of the Regulation as voluntary separation for the purpose of that Regulation must be with just cause for 'reasons solely and directly connected with her employment'.

JURISPRUDENCE: Followed in CUBs 845, 1005 and 1101.

Appeal of the claimant dismissed.

May 20, 1952 (Reversed)**CUB 823***(French)***CLAIMS MATTERS (Married women—voluntarily left without testing employer's rule by request for leave of absence).***Benefit Regulation 5A (1951)*

A 25-year-old claimant whose last employment had been as a sales clerk from October, 1951 to December 29, 1951 when she was laid off for shortage of work, filed a claim for benefit on January 2, 1952. Upon the local office requesting additional information, the claimant advised that she had married on October 1, 1951 and had been last employed previously until August 1951, her separation having occurred for reasons other than those specified in Benefit Regulation 5A.

The claimant was disqualified for a two-year period from the date of her marriage, the claimant appealing on the grounds her employer did not retain married women in his employ. The employer reported that the company did not have any established policy but in the branch of the company in which the claimant had worked, they had never taken back any employees who left to get married. The court of referees unanimously removed the disqualification on the grounds the claimant knew it was useless to ask to be retained after her marriage.

Upon appeal, it was held that the claimant had left of her own free will without making the necessary usual request for leave of absence to get married and that the employer did not have any rule requiring him to dismiss her because of her marriage.

JURISPRUDENCE: Followed in CUB 884.

Appeal of the insurance officer allowed.

May 20, 1952 (Varied)**CUB 827****LABOUR DISPUTE (Incident characteristic of labour dispute, Merits irrelevant, Stoppage of work, Termination of disqualification—end of stoppage).***Section 39 of the Act (1946)*

The claimant who applied for benefit on December 15, 1951, had lost his employment with Ford Motor Company of Canada Limited, Windsor, Ontario on December 3, 1951 by reason of a stoppage of work due to a labour dispute. A provincial conciliation board had held sittings in October on the union's request for wage increases but had not rendered a report as of November 29th whereupon a protest demonstration had been organized by a number of employees. On December 1, officials of the union and of the company had met to discuss recent plant disturbances, the company deciding to discharge 26 of the leaders and participants. A stoppage commenced on Monday, December 3 and spread, by 5.30 p.m., to all offices and plant except the plant protection officers. The labour dispute was settled on December 14 and workers in varying numbers were called back from day to day with a view to first rehabilitating the plant which had suffered extensive damage after the maintenance men and power house employees had ceased to work contrary to the collective agreement.

The claimant was disqualified until December 26 when the company recalled all of its employees. A majority of the court of referees removed the disqualification as of 12:01 a.m., December 20, on the grounds there had been "a reasonable resumption of work", 55% of the employees having returned. The dissenting member was of the opinion that the work stoppage had terminated as of midnight December 14.

Upon appeal, it was held that a stoppage of work had not terminated prior to December 26 as neither the production nor the number of employees on the job came near the 85% mark recognized in past decisions, a general or substantial resumption of work occurring only from that date on. It was further held that if it could be established that the employer did not take immediate steps to recondition the works and machinery because it suited his purpose, benefit should be allowed as from the date they could have been reconditioned had the employer so willed but the evidence in the present case did not establish that the employer had deliberately chosen to keep the plant idle. Finally, it was held that the fact the withdrawal of maintenance men was an error of judgment in view of the extensive plant damage which resulted, in other words, several thousand employees suffered loss of employment because of the hasty action of some 26 workers who did not consult their union leaders, is irrelevant as a question of the merit of a labour dispute with which the Umpire is not concerned.

JURISPRUDENCE: Followed in CUBs 1158 and 1533, and applied in CUB 1670.

Appeal of the insurance officer allowed.

June 24, 1952 (Reversed)

CUB 832

AVAILABILITY (Capable while not fully available, Pregnancy of the claimant, Presumption, Proof).

CAPABLE OF WORK (Married women's regulation, Pregnancy, Proof, Separation in this connection).

CLAIMS MATTERS (Married women's regulation—voluntarily left due to pregnancy).

VOLUNTARY LEAVING (Capability as cause—pregnancy, Just cause solely related to employment not shown).

Sections 27(1)(b) and 41 of the Act (1946)

and

Benefit Regulation 5A (1951)

A 24-year-old claimant who was married on May 20, 1950, applied for benefit on December 10, 1951, stating she had borne a child on November 2, 1951, and had last worked from August 1943 to May 31, 1951, when her employment with a life insurance company had terminated by reason of her pregnant condition.

The claimant was disqualified for an indefinite period as not capable of nor available for work and also for a period of two years following the date of her marriage. The claimant submitted, in appeal, a medical certificate dated January 9, 1952, whereupon the insurance officer terminated the disqualification under Section 27(1)(b), and also a letter from her former employer's personnel officer dated June 1, 1950. On the basis of

this letter which stated that the claimant's resignation as a member of the company's regular staff had been accepted effective the day preceding her marriage but that she was re-employed on a temporary basis as from May 22, 1950, the court of referees removed the disqualification on the grounds the claimant had separated at that time by reason of the employer's rule against retaining married women.

Upon appeal, it was held that the change in status from permanent to temporary employee did not constitute a separation, that the relationship of employer-employee only terminated on May 31, 1951 when the claimant had voluntarily left on account of pregnancy.

JURISPRUDENCE: Followed in CUBs **1015**, **1163** and 1194.

Appeal of the insurance officer allowed.

August 20, 1952 (Reversed)

CUB 845

CLAIMS MATTERS (Married women—voluntary leaving on account of pregnancy).

VOLUNTARY LEAVING (Pregnancy, Just cause solely by reason of the work not shown).

Benefit Regulation 5A (1951)

A 35-year-old claimant who was married on June 2, 1951 applied for benefit on March 14, 1952 stating that she had worked as a sales clerk in a chain store from August 18, 1950 to March 6, 1952 but had left voluntarily because of pregnancy, expecting her confinement on June 29, 1952. She stated she had left because her job placed her before the public but that she was available for any job where her appearance did not matter. The employer stated that a permanent employee had had to be trained before the claimant would have had to leave anyway and before the supervisor went on her holidays.

The claimant was disqualified for a period of two years from the date of her marriage. The court of referees unanimously removed the disqualification from March 14 to May 18, 1952 on the grounds that the claimant was available and was the temporary breadwinner for the family due to her husband having become unemployed.

Upon appeal, it was held that the court of referees had examined this case in the light of the jurisprudence dealing with the application of Section 41(1) of the Act to married women who voluntarily leave on account of pregnancy. More applicable were CUB 773 according to which just cause for voluntary leaving under the Regulation in question must be for reasons solely and directly connected with the employment of the claimant, CUB 779 according to which pregnancy is not such a cause, inasmuch as the incapacity, indisposition or aggravation under Benefit Regulation 5A must have taken place solely because and in the course of the work, and finally, CUB 820 according to which discharge from employment because the employer felt the claimant could not do her work or a voluntary leaving on account of a pregnant condition does not come within the Regulation in question.

With respect to the insurance officer's query as to whether a disqualification under Benefit Regulation 5A could be re-imposed, it was held that subsection (2) of the Regulation did not allow a further disqualification unless another marriage was contracted.

JURISPRUDENCE: CUBs 773q., 779q. and 820q. followed.

Followed in CUB 1101.

Appeal of the insurance officer allowed.

August 21, 1952 (Affirmed)

CUB 847

VOLUNTARY LEAVING (Duration of disqualification, Extenuating circumstances, Just cause not shown, Prospects of other employment not investigated beforehand, Working conditions).

Section 41(1) of the Act (1946)

A 31-year-old married claimant who had been employed as a patent clerk with a firm of patent attorneys in Vancouver from 1946 to January 15, 1952 at \$200.00 a month, applied for benefit on January 18, 1952 stating he had voluntarily left to go to Ottawa and complete his apprenticeship although he had no job awaiting him there.

The claimant was disqualified for a period of six weeks. The claimant stated he had served five years on a three years apprenticeship which meant that he had failed three times to pass the qualifying examination for Patent Agents, during which period his wife had had to work because of his low salary. It was also reported that the claimant had found employment with a firm of patent attorneys in Ottawa on February 12, 1952, but had separated on March 22 because of lack of work. The court of referees unanimously found that the claimant had good reason for leaving but should have arranged for employment beforehand or at least have made considerable efforts in this direction, and reduced the disqualification to a period of three weeks.

Upon appeal, it was entirely agreed with the court of referees that the claimant should have assured himself of a job in Ottawa before leaving, it being noted that he returned to Vancouver after only a short period in Ottawa.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant dismissed.

August 21, 1952 (Affirmed)

CUB 848

ADJUDICATION PROCEEDINGS (Interpretation, Jurisdiction of adjudicating authority re legislation).

CLAIMS MATTERS (Married women—misconduct or unsatisfactory services).

MISCONDUCT (Inefficiency, Insubordination, Proof, Relations with supervisors, Voluntary leaving alternatively).

Benefit Regulation 5A (1951)

A 31-year-old claimant who had worked since August 1948 as a folder in a shirt and overall manufacture and who was married on December 12, 1951, separated from employment on April 23, 1952 stating in her applica-

tion for benefit that she had been laid off for not working overtime without having been instructed to do so. The employer stated that the claimant was dismissed because her work was not satisfactory.

The claimant was disqualified for a period of two years from the date of her marriage. The disqualification was maintained by a majority of the court of referees on the grounds that while there was some doubt as to the real reason for her dismissal the Regulation in question provided no grounds for relief in her case. The dissent was in view of the lack of evidence that the employer had cause for dismissal.

Upon appeal, it was held that the claimant was dismissed because apparently her employer was no longer satisfied with her work and although it was very much doubted that misconduct within the meaning of Section 41(1) of the Act had been proved, there was no alternative under the Regulation. It was strongly recommended however that the Regulation be amended to remove the anomaly created in cases like the present one.

JURISPRUDENCE: Applied in CUB 933, referred to in CUB 1045 and distinguished in CUB 1068.

Appeal of the claimant dismissed.

September 5, 1952 (Affirmed)

CUB 859

(CUBs 860 & 861)

ADJUDICATION PROCEEDINGS (Interpretation).

CLAIMS MATTERS (Married women—employer's rule).

Benefit Regulation 5A (1951)

The claimant who had been working as a sales clerk for the T. Eaton Company in Winnipeg since April 1939, married on August 11, 1951 and separated from employment on December 31, 1951 stating as her reason, the employer's rule against retaining married women, the delay having been until she could be replaced and to permit her to support her parents till they were eligible for old age pension. The employer stated that the separation policy was up to the department heads.

The claimant was disqualified for a period of two years from the date of her marriage. The court of referees unanimously removed the disqualification.

Upon appeal, it was held that for the purpose of determining the existence of the rule, the company and not its departmental heads must be considered the 'employer', nothing preventing an employer having different rules depending on the type and the exigencies of the business. It was held that the evidence was abundantly clear that if there was no definite rule, there was a general policy or practice against retaining married women, female employees who get married being placed in the category of employees who are liable to be laid off depending on the season of the year. It was accordingly held that the policy or practice followed by the employer is tantamount to a rule and the fact that in some instances the rule was not applied did not alter the fact of its existence. Furthermore, it was added that "if the evidence indicated that the

claimant had not asked to be retained but had voluntarily left her employer because she assumed she would be dismissed on account of her marriage, the requirement of Benefit Regulation 5A(1)(b)(i) had not been met".

JURISPRUDENCE: Applied in CUBs **884q** and **959** and followed in CUBs **908** and **1012**.

Appeal of the claimant dismissed.

October 2, 1952 (Reversed)

CUB 863
(French)

LABOUR DISPUTE (Attributable to a labour dispute, Loss of employment, Separation prior to stoppage of work, Shortage of work).

Section 39(1) of the Act (1946)

The claimant who had worked as a sewing machine operator in a textile mill, was temporarily laid off on March 11, 1952 owing to a shortage of cloth, along with other employees engaged in the same work. She applied for benefit on March 12 and the following day a stoppage of work due to a labour dispute occurred at the mill.

The claimant and the other employees were disqualified under Section 39(1) of the Act as from March 13. On May 9, 1952, a court of referees, following a hearing on the claims of the employees other than the claimant, unanimously maintained the disqualification on the grounds that the employer had expected to receive the cloth two or three days after the lay-off and, accordingly, the claimant would have been recalled within a short period had it not been for the stoppage. On May 19, the claimant's appeal came before a different court of referees which unanimously removed the disqualification on the grounds that the claimant could not have worked for the employer regardless of the stoppage.

Upon appeal, the decision of the court of referees of May 9 maintaining the disqualification was upheld on the grounds that "the temporary lay-off of the claimant did not have the effect of terminating her contract of service and the evidence clearly indicates that she would have been recalled to work within a short period of time had not the stoppage of work due to a labour dispute occurred at the mill on March 13, 1952".

JURISPRUDENCE: Distinguished in CUB **869** and applied in CUB **870**.

Appeal of the insurance officer allowed.

November 4, 1952 (Reversed)
November 4, 1952 (Reversed)

CUB 868
CUB 869
(French)

LABOUR DISPUTE ((Not) Attributable to labour dispute, Loss of employment, Separation prior to stoppage, Shortage of work).

Section 39(1) of the Act (1946)

The claimants had been employed as weavers by the Montreal Cottons Company Limited of Valleyfield, P.Q., in CUB 868 from 1934 to March 27, 1952, and in CUB 869 from 1948 to March 20, 1952, when they were laid

off because of lack of work. Benefit was allowed until April 2, 1952 when a stoppage of work due to a labour dispute occurred at the plant. A collective agreement had been under negotiations for some time until a deadlock on April 2, 1952 when 2700 of 3000 employees walked out.

The claimants were disqualified under Section 39(1) of the Act and a majority of the court of referees maintained the disqualification.

Upon appeal, it was held that where a claimant had been temporarily laid off before a stoppage due to a labour dispute began, and for reasons independent thereof, the insurance officer before invoking Section 39(1), must satisfy himself that the stoppage of work had delayed the claimant's return to work. It was further held that if the lay off was for a definite period (CUB 863) the claimant was subject to disqualification from the date he was normally due to return to work. In the previous case, the company's representative stated that he could not give any precise details nor even the approximate date of the claimant's return to work; moreover, there was nothing in the evidence which would allow the conclusion that the claimant would have returned to work sometime during the period of the strike had it not occurred, the decision rendered in CUB 716 being applied accordingly.

JURISPRUDENCE: CUB 716 applied, and CUB 863 distinguished.

Distinguished in CUB 870.

Appeal of the claimants allowed.

November 4, 1952 (Varied)

CUB 870

LABOUR DISPUTE (Attributable to a labour dispute, Loss of employment, Separation prior to stoppage, Shortage of work).

Section 39(1) of the Act (1946)

The claimant who had been employed as grinder by the Timkin Roller Bearing Company of St. Thomas, Ont., from February 1948 to March 8, 1952, applied for benefit on March 12 stating he had been laid off temporarily. The employer confirmed this but added that as of March 13 the claimant was on strike.

The claimant was disqualified under Section 39(1) of the Act from March 13, 1952 and for the duration of the stoppage. A majority of the court of referees maintained the disqualification on the grounds that the claimant had not been laid off indefinitely but would have been recalled on March 15, 1952.

Upon appeal, it was held that the claimant who had been laid off five days before the strike, and apparently for reasons independent thereof, must be considered as having been unemployed starting March 15, due to a stoppage of work resulting from a labour dispute (CUBs 716, 863 and 868). It was further held, for the benefit of the dissenting member of the court of referees, that the adjudicating authorities could not deal with the merit of a labour dispute and be drawing a distinction between an authorized and an unauthorized strike.

JURISPRUDENCE: CUBs 716 and 863 applied and CUBs 868-9 distinguished.

Followed in CUB 1533 re merits.

Appeal of the claimant allowed for the first two days.

November 4, 1952 (Reversed)

CUB 875

CUC 29

ADJUDICATION PROCEEDINGS (Board of Referees: procedure, rehearing at the insurance officer's request, ultra vires, Jurisdiction of adjudicating authority re aspect raised by adjudication, re coverage).

CLAIMS MATTERS (Qualification—extension of two years).

LABOUR DISPUTE (Picketing).

Sections 28(1) and (3), 45 (1946) and 48 (1946) of the Act (1950)

The claimant had been employed as a sheet metal worker by a manufacturer of electrical equipment from 1937 to May 10, 1950 when he lost his employment by reason of a stoppage of work due to a labour dispute which began at the premises the following day and did not terminate until a year later on May 16, 1951. He had then performed picket duty and received monies from his union during nearly the whole period. Upon a general resumption of work on May 17, 1951, the claimant had returned to employment in which he continued until laid off for shortage of work on June 15.

His initial claim was disallowed because of insufficient contributions under Section 28(1) of the Act. The court of referees referred to the Commission, as a matter for its jurisdiction, the question whether the claimant was under contract of service during the time he had performed picket duty and received monies from his union. Pursuant to the Chief Coverage Officer's opinion, on January 16, 1952, that the question remained one of qualification, the court of referees again heard the case following which it unanimously allowed the claimant's appeal on the grounds that the claimant had been under contract of service while so engaged and was now entitled to extension for the qualifying period. The insurance officer appealed to the Umpire on the grounds the question, being under Section 45 of the Act, was beyond the jurisdiction of the court of referees. The Commission pursuant to Section 48 of the Act referred the question to the Umpire.

Upon appeal, it was held that there were two questions to decide: whether the claimant was under contract of service while performing picket duty and whether or not such activity came within the provisions of Section 28(3) of the Act. It was held, on the basis of representations from the Canadian Labour Congress, that the monies paid the claimant by the union were not conditional on the performance of picket duty and even if they were, there was no contract of service involved. Accordingly it was held that such activity was not a form of employment within the meaning of the Act and, accordingly, there was no grounds for extension of the two-year period under Section 28(3) of the Act. The suggestion that participation in a stoppage of work be added to Section 28(3) as a new ground for extension was recommended to the Commission as "a very interesting suggestion indeed".

JURISPRUDENCE: Distinguished in CUB 1083.

Appeal of the insurance officer allowed.

December 2, 1952 (Reversed)**CUB 884***(French)***CLAIMS MATTERS (Married women—employer's rule).****VOLUNTARY LEAVING (Just cause not shown in connection with employer's rule).***Benefit Regulation 5A (1951)*

A 31-year-old claimant who had worked since April 1, 1952 as a stenographer, separated from her employment on May 30, 1952 on the grounds that her employer did not retain married women in its employ, the claimant being married on July 12, 1952. To the local office's query, the employer stated "we employ married women but we prefer not to keep employees who are being married".

The claimant was disqualified for a period of two years from the date of her marriage. The court of referees unanimously removed the disqualification on the grounds that separation resulted from the employer's rule.

Upon appeal, it was held that the claimant's separation did not result from the *application* of the employer's rule inasmuch as the claimant had voluntarily left to be married without asking for the customary leave of absence (CUBs 823 and 859). It was added that "in the light of the employer's statement it is difficult to conclude that such rule existed in his establishment."

JURISPRUDENCE: CUB 823 followed and CUB 859q. applied.

Followed in CUBs 908 and 1012.

Appeal of the insurance officer allowed.

December 2, 1952 (Reversed)**CUB 885****VOLUNTARY LEAVING (Change of residence, Just cause not shown, Personal circumstances, Prospects of work not investigated beforehand).***Section 41(1) of the Act (1946)*

A single 20-year-old claimant who had been employed in a large Alberta city as a soft drink truck helper since May 19, 1952 voluntarily left on August 2, 1952 to return home to a small town in Nova Scotia where he hoped to get employment in his trade of electric welder. In filing his claim, he stated he had made no inquiries regarding the possibility of obtaining work there.

The claimant was disqualified for six weeks. The court of referees unanimously removed the disqualification on the grounds that the claimant's earnings had been too low in comparison with his necessary expenses and his prospects of obtaining work in his home area in his trade were rather bright.

Upon appeal, it was held to be a standing rule of the jurisprudence established to date "that unless there are special circumstances, which do not exist in the present case, a claimant who voluntarily leaves his employment to move to another area where he had no definite prospect of work does not show just cause within the meaning of Section 41(1) of the Act."

JURISPRUDENCE: Followed in CUB 1532 and 1552.

Appeal of the insurance officer allowed.

December 4, 1952 (Varied)

CUB 387

AVAILABILITY (Domestic circumstances, Effort to find work, Married women, Proof, Prospects of employment, Restricted to days—shifts, Suitable employment refused—joint disqualification).

SUITABLE EMPLOYMENT (Availability—disqualification left only for refusal, Change from conditions—shift work, Domestic circumstances, Duration of unemployment—long, Employment market, Good cause not shown, Prevailing conditions, Prospects).

Sections 27(1)(b) and 40(1)(a) of the Act (1946)

A 21-year-old married claimant who had been employed as a press machine operator at 75c an hour from September 14, 1951 to January 11, 1952 when she was laid off for a shortage of work, had been disqualified for refusing to apply, on April 1952, for employment as a power sewing machine operator at 60c an hour plus piece work, on the grounds she had no one to look after her baby in the evenings, the local office reporting that she was able to do only day work, 7:30 a.m. to 5:00 p.m. On August 8, 1952 the claimant was notified of a permanent employment on a shift basis as power sewing machine operator with another company at 60c an hour, the prevailing rate, which she refused for the same reason as previously, the local office reporting that there had been no openings in recent months for married women desiring day work in factories.

The claimant was disqualified for six weeks under Section 40(1)(a) of the Act and for an indefinite period under Section 27(1)(b). A majority of the court of referees maintained the two disqualifications.

Upon appeal, it was held that "shift work, whatever inconvenience it may cause the worker, is a recognized fact in industry." Furthermore, while the Act took into consideration, to a reasonable degree, a claimant's domestic circumstances, a determining factor was that the claimant had been out of work for several months during which she was unable to find employment of the kind she desired and the local office reported there was no openings. The employment accordingly was considered suitable. It was held however that the claimant had not so restricted her field of employment as to no longer be considered not available inasmuch as she was available for work during normal working hours and there was considerable reason to doubt that there was no likelihood of day work for the claimant in some occupation either in her hometown which had a population of 30,000 or in the surrounding district.

JURISPRUDENCE: Distinguished in CUB 1056 and applied in CUB 1576.

Appeal of the claimant's union allowed with respect to availability.

January 14, 1953 (Affirmed)

**CUB 888
CUC 30**

ADJUDICATION PROCEEDINGS (Board of Referees: procedure, ultra vires, Commission's responsibility re claims procedures, Jurisdiction of adjudicating authorities re coverage, Umpire—decision).

CLAIMS MATTERS (Contributions).

EARNINGS (Overtime credits, Retainer).

UNEMPLOYED (Off-season unemployment, Usual remuneration).

Section 27(1)(a) of the Act (1946)

The claimant who had worked as a first mate for a dredging company from April 19 to December 17, 1951, when the season ended, was allowed benefit on a claim filed on December 28. On January 17, 1952, the local office reported that the claimant had just advised he would be receiving at monthly intervals during January, February and March, a cheque from his employer amounting to 40% of his salary of \$232.00; the employer stated that the monies were a gratuity to cover overtime worked during the season, the claimant was free to take other employment and there was no contract providing for his return to employment in the Spring.

The claimant was disqualified for an indefinite period as not unemployed. The court of referees unanimously maintained the disqualification but granted leave to appeal. Meanwhile, the opinion of the Chief Coverage Officer of the Commission was obtained to the effect that the employees were employed throughout the year, their contract remaining in force during the off-season while they were paid the minimum wages provided by their bargaining agreement. It was decided to submit the question for formal decision by the Commission. The latter in turn referred it to the Umpire.

Upon appeal, it was held that the claimant's contract of service was in effect during the off-season in that, according to Section 8 of Article V of the bargaining agreement, the employer retained during the off-season, the right to refuse its employees whose services are not required, permission to accept employment with other employers as well as the right to recall them to work at any time. The employee-employer relationship according to law, ends only when the employer has no longer the right of control over the employee, the fact that services are or are not rendered, not being a determining factor. It was held further that the 40 percent of regular wages paid employees in the claimant's group during the off-season when they do not work was not merely a compensation for 'standby overtime' but remuneration for their undertaking to not accept employment elsewhere without the consent of the company and to be available for work with the company at any time, such payments being specifically referred to in the bargaining agreement as 'minimum wages'. Accordingly, the claimant was not unemployed during the period for which part wages were received and furthermore, unemployment insurance contributions were payable with respects to such wages.

JURISPRUDENCE: Applied in CUB 1129.

Appeal of the claimant dismissed.

January 14, 1953 (Reversed)**CUB 890****LABOUR DISPUTE** (Existence of labour dispute, Merits irrelevant, Misconduct, Stoppage of work, Union existence).**MISCONDUCT** (Absence, Insubordination, Labour Disputes, Relations with supervisors, Rules not followed, Union activities).*Sections 39 and 41(1) of the Act (1946)*

The claimant applied for benefit, stating he had been employed by a radio manufacturing company from 1941 to June 19, 1952 when he was dismissed because of his union activities. The employer reported that the claimant had been discharged for repeated infractions of the rules and violations of the terms of employment including an unauthorized absence from work and participation in unauthorized work stoppages. The claimant was one of 15 employees, also officers of the union who had been discharged on June 19 as a result of similar activities.

Upon referral by the insurance officer, the court of referees unanimously decided that there was a labour dispute between the employer and the employees, that there was no appreciable stoppage of work within the meaning of Section 39 of the Act and, finally that as the claimant continued to absent himself from work without permission to attend mass meetings despite the repeated warnings from the company, he was guilty of misconduct within the meaning of Section 41(1) of the Act.

Upon appeal, it was held that there was no basis for applying Section 39 inasmuch as while there was a labour dispute there had been no appreciable stoppage of work at the time of the dismissals. It was further held that the claimant's activities during the dispute, whether justified or not, could not be accepted as a basis for disqualification under Section 41(1) of the Act as the adjudicating authorities should not concern themselves with the merit of a labour dispute.

JURISPRUDENCE: Distinguished in CUB 891q. and followed in CUB 1533 re merits and applied in CUB 1670.

Appeal of the claimant's union allowed.

February 17, 1953 (Reversed)**CUB 891***(French)***LABOUR DISPUTE** (Attributable to labour dispute, Existence of labour dispute, Incidents characteristic of L.D., Insistence and resistance of parties, Misconduct, Stoppage of work).**MISCONDUCT** (Insubordination, Labour dispute, Rules not followed, Union activities).*Section 39(1) of the Act (1946)*

Twelve claimants lost their employment with a textile company on June 19, 1952 when they and a number of their fellow-workers, despite the superintendent's warnings, left the plant that morning to attend a meeting which had been called by the union for the purpose of deciding what retaliatory action would be taken against the employer for his refusal to reinstate two employees who had been dismissed two or three weeks before.

The claimants were disqualified for the duration of the stoppage of work, from June 19 to July 25, 1952. The court of referees unanimously reduced the period of disqualification to two weeks from June 19 on the basis that the dismissal constituted a lay-off within a mass lay-off which occurred on June 19 for conduct judged by the employer as being contrary to the interests of his enterprise, the reduction being by reason of the apparent good will of the employees in returning to their work upon being warned by the superintendent.

Upon appeal, it was held that the claimant had lost their employment within the meaning of Section 39(1) and accordingly were subject to disqualification for the duration of the stoppage. It was further held that the labour dispute which originated from the company's dismissal of two union members culminated on the 19th of June in a common and collective suspension of work by a large number of workers followed by the refusal of the employer to rehire them, this case being contrasted with that in CUB 890 in which no appreciable stoppage of work had occurred. Regarding the court of referees' finding that the employees had decided not to appear at the meeting following the ultimatum from the company's superintendent, there were noted the contrary statements made by the claimants in filing their claims for benefit.

JURISPRUDENCE: CUB 890q. distinguished.

Applied in CUB 1446.

Appeal of the insurance officer allowed.

February 17, 1953 (Reversed)

CUB 894
(French)

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—finding of fact—reversed, Evidence—employment history).

UNEMPLOYMENT (Engaged on own account, Farmers, Off-season, Proof, Subsidiary).

Section 27(1)(a) of the Act (1946)

and

Benefit Regulation 5(3)(b), 1949

A 49-year-old claimant applied for benefit on March 14, 1952, stating he had worked as a bushman from August 1, 1951 to March 5, 1952, when he was laid off for shortage of work, and also that he was the owner of a farm. The farm consisted of 90 acres of which 80 were under cultivation; he lived on the farm and hired a man with a team of horses for the harvest. There were recorded 135 contributions during the year preceding his claim and 68 during the two preceding off-seasons.

The claimant was disqualified during the off-season as unemployed because of the insufficient contributions to his credit. The court of referees maintained this decision on the grounds that his main occupation was that of a farmer.

Upon appeal, it was held that the Commission's manuals for the guidance of its employees, such as on Benefit, "must never supersede the decisions of the Umpire who is the final authority" in interpreting the Act and Regulations. There was held to be no provision stating that the

main employment of the owner of the farm must be determined by the number of contributions paid during the twelve preceding months. There had been indicated, in CUB 745, certain factors rather to be taken into account of this purpose: the claimant's previous employments (insurable or otherwise), the extent of his participation in the operation of his farm, the number of contributions to his credit and the seasons during which they were made. It was held that the claimant's contention he was ready to accept work at any time away from his farm was substantiated by his employment history with the exception of July 1951 and 1952; the reason for few contributions was that he had been engaged in non-insurable employment and also had been off work on account of sickness. Finally, it was held that the claimant's principal employment was not the operation of his farm if account was taken of the assistance of his son and that he had no farm equipment nor livestock; the eventual hope to acquire livestock was not a factor to be taken into account in the light of all the other circumstances.

JURISPRUDENCE: CUB 745 applied.

Applied in CUBs 942 and 1551, and referred to in CUB 925.

Appeal of the claimant allowed.

February 17, 1953 (Affirmed)

CUB 396

AVAILABILITY (Capable of work, Pregnancy of claimant, Restricted as to duration, light work and occupation, Voluntary leaving—disqualification only as not available).

Section 27(1)(b) of the Act (1946)

A 28-year-old married claimant registered as a dressmaker applied for benefit on May 23rd 1952 stating that she had worked as a shipper and sewer for a firm of dry cleaners from 1948 to April 11th 1952 and had voluntarily left because she had to lift parcels weighing between 20 and 50 pounds and found such duties too strenuous as she expected a baby in seven or eight months' time.

The claimant was disqualified for an indefinite period as not capable of nor available for work. The court of referees unanimously maintained the disqualification. Upon the claimant submitting new facts in the form of a medical certificate dated June 30th 1952, to the effect she was able to undertake work as an "alterationist", a rehearing was held by the court of referees but it unanimously affirmed the previous decision.

Upon appeal it was held that "any claimant who restricts the scope of his employment to one occupation which he intends or is only able to follow for a limited period of time, is not considered available for work within the meaning of the Act. This, a fortiori, applies to a woman whose capability for work is lessened by her pregnant condition."

JURISPRUDENCE: Distinguished in CUB 1141.

Appeal of the claimant dismissed.

February 19, 1953 (Reversed)**CUB 908***(French)***CLAIMS MATTERS (Married Women's Regulation—employer's rule).***Benefit Regulation 5A (1951)*

The claimant who had been working for a textile company since 1947, had been drawing benefit as a short-time claimant since October 11, 1951. On October 1, 1952 the local office reported that she had married on September 20, 1952 and had left her employment on August 29 for that purpose. The employer stated that the claimant had not been discharged in consequence of any rule but had voluntarily left. The claimant stated that she had not applied for retention after her marriage because she knew that the same employer had refused someone else earlier.

The claimant was disqualified under Benefit Regulation 5A. The claimant appealed, stating that after her marriage she had applied for work to the personnel manager who, although he took her application, had informed her he had no work for her. The court of referees unanimously removed the disqualification on the grounds the employer's policy was tantamount to a rule against retaining married women.

Upon appeal, it was held that the fact that the employer's personnel manager took her application after marriage showed there was no rule against retaining married women and that the evidence showed that the claimant had left without informing her employer of her desire to return after marriage. It was held that the case was similar to that decided in CUB 884 in which CUB 859 was quoted to the effect that where a claimant voluntarily left without asking to be retained because she assumed she would be dismissed on account of her marriage, the requirement of Benefit Regulation 5A (1) (b) (i) had not been met.

JURISPRUDENCE: CUBs **884** and **859q.** followed.

Followed in CUB 1012.

Appeal of the insurance officer allowed.

February 19, 1953 (Reversed)**CUB 912***(French)*

AVAILABILITY (Circumstances beyond claimant's control or deliberately created, Domestic circumstances, Intention of claimant, Married women, Prospects of employment, Restricted as to area, generally, as to occupation, Voluntarily left—delayed claim).

Section 27(1)(b) of the Act (1946)

A 29-year-old married claimant who had worked from 1945 to August 30, 1952 as a stenographer in a Quebec city, applied for benefit on October 3, 1952 at a local office in Southern Ontario, stating that as she did not speak or write English, she would take work as a French stenographer only.

The claimant was disqualified for an indefinite period as not available for work inasmuch as the opportunities in the area for work as a stenographer were limited to those speaking English or both languages. The claimant appealed, stating that she had left her employment in Que-

bec only when she had been replaced by another stenographer; after that she had married and taken up residence with her husband in Southern Ontario. The court of referees unanimously removed the disqualification on the grounds that French was an official language in Canada and a Federal Act was involved.

Upon appeal, it was held that the principle involved was the same as in the case of claimants who refused to take employment elsewhere than in the area where they live or who, for domestic or other reasons, restricted their availability to hours inconsistent with those of the labour market. Availability, as stated in many previous decisions, while primarily a subjective matter to be considered in the light of the claimant's intention towards employment, might be objectively determined by "the claimant's prospects of employment in relation to a certain set of circumstances beyond his control or which he has deliberately created." The claimant was held to be not available due to her self-imposed restricted availability to a kind of employment which does not exist in the area although "her case would have been decided otherwise had she shown good faith and registered for employment of a kind which, could reasonably be expected to be found for her".

JURISPRUDENCE: Referred to in CUB 916.

Appeal of the insurance officer allowed.

March 4, 1953 (Affirmed)

CUB 915

ADJUDICATION PROCEEDINGS (Evidence: enforcement officer finding, statements before disqualification).

UNEMPLOYED (Availability despite employment, Family enterprise, Full working week, Retired from regular employment, Usual remuneration).

Section 29(1)(a) of the Act (1946)

A 68-year-old married claimant who was retired as a railway yard foreman on pension "on account of poor eyesight", from employment he had held since 1913, filed a claim for benefit, single rate, on November 23, 1951, 18 days later.

The local office discovered subsequently that the claimant was connected with the operation of a restaurant had the matter investigated. According to the declaration of the claimant and his wife on March 6, 1952, the restaurant would have been purchased by the wife in whose name both the agreement of sale and business licence were registered; since commencing operations on November 20, 1951, the claimant had worked as a general handyman up to six or seven hours each day but had received no compensation other than board.

The claimant was disqualified as not unemployed. The court of referees unanimously maintained the disqualification.

Upon appeal by the claimant's union, it was held that the present case could be distinguished from CUB 514 under which claimants were allowed to do 'little things at home . . . as a benevolent gesture' provided it was not for remuneration or profit. It was held in the present case that the claimant's participation in the business "went far beyond the assistance which might be expected under similar circumstances of any married man who is temporarily unemployed" inasmuch as he gave his full-time to the

restaurant and made no efforts to obtain employment. While carrying an occupation for which it is customary to receive remuneration, he was not only not seeking employment but being busy during normal working hours, he had placed himself in such a position that 'no employment will seek him'. Finally, it was held that although the claimant had not declared his participation in the business there was no conclusive evidence of bad faith.

JURISPRUDENCE: CUB 514 distinguished.

Applied in CUB 1063.

Appeal of the claimant's union dismissed.

March 5, 1953 (Varied)

CUB 916

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—finding of fact—varied, Evidence: employment officer opinion, employer information).

AVAILABILITY (Effort to find work, Intention of claimant, Prospects of employment, Restricted as to occupation, Separated from his regular employment).

MISCONDUCT (Offence—criminal, Relations with supervisors).

Sections 27(1)(b) and 40(3) of the Act (1946)

A 23-year-old single claimant who had worked as locomotive firman for a railway company from November 15, 1949 to July 31, 1952, was dismissed from his employment after having served 30 days in jail for creating a disturbance; the offense occurred off the company's property and while he was off duty. The claimant insisted on registering for employment as a locomotive fireman although the local office reported it was practically impossible to place him in that occupation.

The claimant was disqualified as not available for work. The court of referees unanimously maintained the disqualification. The claimant's union appealed on the grounds there were four large industrial companies in the claimant's city which employed a large number of locomotive firemen for their plant railways; the local office reported that all these companies train their own firemen from their regular personnel and only one placement had been listed with the local office in 18 years.

Upon appeal, it was held that the claimant was available for the period of one month after his actual unemployment began, (final dismissal occurring on September 15 only and the claim for benefit having been filed on the following day) inasmuch as it was quite possible that the claimant could, through his own efforts, find employment with one of the industrial companies. It was held that after a month the claimant could be said to have so unduly restricted his sphere of employment, that he was not prepared to accept at once any offer of suitable employment brought to his notice, an essential requirement for availability. It was held that the period of one month was a reasonable interval within the meaning of Section 40(3) of the Act "in the light of the circumstances of the case", each case being dealt with on its own merits, reference being made to CUB 912 as an example of claimants who restricted their sphere of employment to work in their usual occupation which they could not reasonably hope to find due to circumstances beyond their control or which they have deliberately created.

JURISPRUDENCE: CUB 912 referred to.

Followed in CUB 1532.

Appeal of the claimant's union allowed in part.

March 23, 1953 (Reversed)

CUB 917

ADJUDICATION PROCEEDINGS (Commission's responsibility re claims procedures and policy, Interpretation, Jurisdiction of adjudicating authority re legislation).

EARNINGS (Bonuses, Retirement pay, Services performed, Usual remuneration).

UNEMPLOYED (Retirement leave, Usual remuneration).

Section 29(1)(f) of the Act (1952)

and

Section 5(2)(e)&(f) of the Benefit Regulations (1952)

A 65-year-old claimant who had worked as a buyer for a grain company from 1926 to September 27, 1952, when he was retired on account of age, applied for benefit on September 30. His employer stated that the claimant would be paid an amount equal to $\frac{1}{3}$ his regular monthly salary, for the months of October, November and December 1952 as a gratuity for services rendered in the past.

The claimant was disqualified for the period from October 1 to 21, 1952 as not unemployed within the meaning of Section 29(1)(f) of the Act. The court of referees unanimously removed the disqualification on the grounds it was reasonable to assume the gratuity was paid out of a pension fund (Benefit Regulation 5(2)(e)). The insurance officer appealed, invoking Benefit Regulation 5(2)(f), and requested the Umpire to determine whether the disqualification should be for one month or $\frac{1}{3}$ of each month as the gratuity was received.

Upon appeal, it was held that while the power conferred on the Commission by Section 29(1)(f) to prescribe the days in respect of which money shall be deemed to be received, appears to be limited to instances where the money, is not equivalent to the insured person's normal daily remuneration, the wording of paragraph (e) and (f) of the Regulation would lead one to believe the Commission had exceeded its jurisdiction in that respect. It was held that, in any event, the monthly bonus did not come out of a retirement, superannuation or pension fund within the meaning of paragraph (e) which in effect is an exception of paragraph (f), but accordingly came under paragraph (f) as the monies were received at the occasion of or subsequent to termination of employment. It was further held that, as paragraph (f) used the word 'receive' in the present tense, the disqualification could only take place as the claimant received the bonus and for $\frac{1}{3}$ of the month at a time. Strict interpretation would further necessitate making these separate disqualifications retroactive to the period immediately subsequent to the termination of employment but it was held that the administrative difficulties as well as hardship to claimants and the involved wording of paragraph (f) justified not adopting such an interpretation.

JURISPRUDENCE: Followed in CUBs 936 and 937.

Appeal of the insurance officer allowed.

March 20, 1953 (Affirmed)

CUB 918

ADJUDICATION PROCEEDINGS (Interpretation).**LABOUR DISPUTE (Participation, Parties to the dispute, Picketing, Reprisals, Union membership, Violence).***Sections 39 and 40(2)(a) of the Act (1946)*

The claimant, a member of Local 200, U.A.W.-C.I.O., who had been employed at an hourly rate as a tool crib man for the Ford Motor Company at Windsor, Ontario, from February 26, 1928 to May 23, 1952, lost his employment by reason of a labour dispute. The salaried office workers, members of Local 240, had gone on strike on May 19, 1952, setting up a picket line at plant No. 1, which houses the offices and some production departments, but permitting the hourly rated employees however to cross through to their regular work. On May 23 however, picketing was extended to all plants and the hourly rated employees refrained from crossing, resulting in a complete stoppage of work lasting till June 1, 1952.

The claimant was disqualified from May 23 to June 1, under Section 39(1) of the Act, the disqualification being maintained by a majority of the court of referees. The brief submitted by the Canadian Congress of Labour on behalf of the claimants did not contest the finding of the court of referees that the picketing was entirely peaceful, there was work available for the claimants and they had deliberately refrained from crossing the picket lines; the brief rather challenged "the unduly rigid interpretation" of Section 39 which excluded any reason for not crossing a picket line other than the presence or threat of physical violence, to wit, respect for the union's code of behaviour established by experience and tradition whereby it was morally wrong to cross a picket line, also the potential loss of beneficial treatment enjoyed by virtue of trade union membership and adherence to its standards.

Upon appeal, it was held that the right to associate with others in the pursuance of common and *legitimate* interests and to act in accordance with the principle of such association did not justify any participation in immorality whether by positive or negative acts. Furthermore, the disqualification by reason of participation "depends upon the fact of voluntary action and not upon the motives which led to it", the legislator in Section 39 not concerning himself with either the morality of such motives or the merits of labour disputes. Nor did the legislator intend that unemployment insurance monies in which both parties to a labour dispute have a proprietary interests, should be used for the benefit of one in the pursuit or the furtherance of an economic battle against the other, as otherwise a union, subsidized from the Fund, could paralyze a whole industry to public detriment. The language and context of Section 39, it was held, "cannot be strained to include exemptions equivalent to the exercise of what virtually could become an economic blockade by organized labour", the present case being distinguished from that contemplated by Section 40(2) (a) in which there is no legal relationship between the prospective employer and the claimant and the consequences are not the same. Finally, it was added that claimants who, even though no actual violence is displayed,

refrained from crossing picket lines "on account of a legitimate fear of reprisals against them, their families or material possessions" were not participating within the meaning of Section 39(2) of the Act.

JURISPRUDENCE: Applied in CUB 1019 and distinguished in CUB 1021.

Appeal of the claimant's union dismissed.

April 16, 1953 (Affirmed)

CUB 929

EARNINGS (Reinstatement damages, Usual remuneration).

MISCONDUCT (Insubordination, Relations with supervisors, Rules not followed).

UNEMPLOYED (Contract of service, Usual remuneration).

Section 41(1) of the Act (1946)

A single 29-year-old claimant who had been employed as a machine operator, from September 2, 1947 to November 3, 1952, applied for benefit on November 7 stating he had been discharged for leaving the plant without permission on one occasion.

The claimant was disqualified for having lost his employment by reason of his own misconduct. Following the submission of the dismissal to arbitration by the claimant's union, the employer provided the additional information that the claimant who had been working his regular shift from 4:00 p.m. to 12:30 a.m., had punched out at 8:06 p.m. for the purpose of attending a Halloween party. The court of referees unanimously maintained the disqualification, noting that while the misconduct may not have been such within the meaning of the union's master agreement with the employer, it was only necessary to establish it was a misconduct within the meaning of the Unemployment Insurance Act; the court however expressed regret that the claimant had not appeared before it on the instructions of his union pending disposal of arbitration proceedings and that certain relevant information had been withheld the court for the same reason. In its decision the court noted the union contention that the lead-hand had authority to permit the absence in question.

Upon appeal, it was noted that as a result of arbitration proceedings the claimant was re-instated in his employment on February 16, 1953 and paid his wages retroactively to November 13, 1952 it having been deemed sufficient, in view of the claimant's misconduct, to suspend him for seven working days as from November 3, 1952.

It was accordingly held that the claimant could not be considered as unemployed for any part of the period from November 3 on.

JURISPRUDENCE: Followed in CUBs 1155 and 1156.

Appeal of the claimant's union dismissed.

April 16, 1953 (Varied)

CUB 930

ADJUDICATION PROCEEDINGS (Board of Referees: *ultra vires*, unanimous decision—finding of fact—credibility—varied, Disqualification procedure).

AVAILABILITY (Disqualification duration—shortened, Domestic circumstances, Personal circumstances, Pregnancy, Presumption of non-availability, Proof, Restricted to part-time, Voluntarily left—disqualified only as not available).

VOLUNTARY LEAVING (Availability—disqualification as N.A. only, Capability as cause—pregnancy).

Section 27(1)(b) of the Act (1946)

A 33-year-old married claimant who had been employed as a laundry checker since August 1945, voluntarily left her employment on September 20, 1952 on the grounds the job was too hard for her in view of her pregnant condition, and applied for benefit on October 17, 1952. The claimant added that she expected to be confined about March 15, 1953 and on her doctor's advice felt she could do four hours per day in a job where she would be sitting down.

The claimant was disqualified from the date of her claim as not available for work, whereupon she submitted a medical certificate which confirmed the expected date of confinement and stated that till then the claimant should not do any heavy work. The court of referees unanimously removed the disqualification up to a period of six weeks prior to the expected date of confinement on the grounds that the claimant had satisfied the court that she was both able and willing to accept employment and had made herself fully available, i.e., without her former restriction to four hours per day.

Upon appeal, it was held that the claimant had not established any unusual circumstances which would rebut the presumption of non-availability recognized by all previous jurisprudence in the case of claimants who voluntarily leave their employment on account of pregnancy. CUB 530 was quoted to the effect that such claimants are handicapped to a considerable extent in obtaining employment by reason of their condition and also their impending non-availability; furthermore, they should be considerate of their health and of the future of the child they are carrying. Part-time employment is very scarce and an expectant condition with its related handicaps made it more difficult to secure part-time employment which is already very scarce: "Unless there are special distressed circumstances where the claimant is the breadwinner of the family and reasonable opportunities of part-time work prevail, benefit should not be allowed". CUB 620 was also quoted to the effect that generally speaking, the rule stated in CUB 530 would apply to all claimants who voluntarily leave due to pregnancy even when there is no part-time restriction. With respect to the period of disqualification of six weeks before confinement determined by the court of referees, this was held to be contrary to CUB 445 which laid down that a disqualification under Section 27(1)(b) cannot be predetermined in a case of a pregnant woman who successfully rebuts the presumption of her non-availability created by voluntary leaving.

JURISPRUDENCE: CUBs 530q. 620q. and 445 followed.

Followed in CUBs 945 and 1513, referred to in CUB 1220 and distinguished in CUB 1499.

Appeal of the insurance officer allowed.

May 15, 1953 (Affirmed)

CUB 935

SUITABLE EMPLOYMENT (Availability—disqualification only for refusal, Change from usual area, Conditions: travel distance, Domestic circumstances, Duration of unemployment—long, Good cause not shown, Personal circumstances, Prevailing conditions, Prospects of other work, Voluntarily left last previous employment—subjective reasons).

Section 40(1)(a) of the Act (1946)

A 36-year-old married woman who had been employed as an assistant manageress of the ladies' wear department of a department store in Regina, Sask. at \$48.00 a week, from September 1947 to January 12, 1952, and who, in applying for benefit on July 3, 1952, had stated as the reason for her separation, "Pregnancy—child born on 5 June 1952", refused on December 12, 1952 an offer of permanent employment as manageress of a ladies' wear department of the Weyburn Co-operative Association at a salary of \$300.00 a month (the prevailing rate being \$200.00) on the grounds it was impossible to leave town. The local office reported that the claimant had been offered several positions as ladies' wear saleslady in Regina which she had refused on the grounds the salary was too low and, furthermore, that there were no jobs in Regina similar to her previous one.

The claimant was disqualified for a period of six weeks from the date of her refusal. The court of referees unanimously maintained the disqualification. The Chairman granted leave to appeal on the grounds that there may have been special circumstances in accordance with CUB 572: she had an infant child and was living at home with her husband who was employed in Regina, it was impossible to commute to Weyburn except on week ends, and finally, the claimant had not been advised by the local employment office of the principle governing offers of employment to married women.

Upon appeal, the unanimous finding of the court of referees and its expressed doubt as to the claimant's availability were confirmed. It was held that the factor, domestic circumstances, was "greatly outweighed by the claimant's lengthy period of unemployment, the unlikelihood of her obtaining, in her home town, the rate of pay which she desires and the fact that she has refused several offers of employment in her usual occupation and at the prevailing rate of pay in the district". As regards the point raised by the Chairman of the court of referees, it was held difficult, if not impossible, to lay down a hard and fast rule as the factors affecting suitability of an offer of employment are multiple and varied especially for married women, it being noted that while "the policy has always been, so far as possible to protect the integrity of the home, this protection cannot be absolute". The claimant's contention that she was not advised by the local office of the principle governing married women was held to have little bearing on the issue in the light of all other circumstances.

JURISPRUDENCE: CUB 572 referred to.

Applied in CUBs 938q, 1576, and distinguished in CUB 1692.

Appeal of the claimant dismissed.

June 4, 1953 (Reserved)

CUB 941
(*French*)

AVAILABILITY (Antedate, Capable of work, Circumstances beyond claimant's control, Restricted generally, Temporary non-availability).

CLAIMS MATTERS (Antedate—good cause for delay but availability not proven).

Sections 28(1)(b), 28(3) and 36(6) (1946) of the Act
and

Section 13 of the Benefit Regulations, 1949

A 24-year-old single claimant filed a claim for benefit on September 25, 1952 stating he had last worked from August 1947 to November 28, 1949; he requested an extension for the entire period allowable under Section 28(3) of the Act, namely, from November 29, 1949 to September 24, 1952, because he had been unable to work due to pulmonary tuberculosis. The extension was granted but the claimant could still not fulfil the requirements of Section 28(1) (b) of the Act because of insufficient contributions. On November 17, 1952, the claimant requested that his claim be antedated from September 24 to September 17, 1952 on the grounds that he had been able to work during this period but had been unable to secure his release from the hospital due to the absence of its doctors who were on convention; accordingly, he had not been able to apply for benefit before September 25. In support the claimant submitted a report from the hospital's medical director to the effect that the claimant could have left the hospital in August 1952, if the hospital authorities had known that a period of 24 days could be detrimental to the patient's recovery if he remained on at the sanatorium.

The request for antedate was refused on the grounds the claimant had not shown good cause for delay in making his claim. The claimant submitted a further statement from the hospital's director to the effect that normally the claimant's hospital discharge would have been considered on September 17, but it had had to be postponed for the reasons stated earlier by the claimant. The court of referees unanimously removed the disqualification.

Upon appeal, it was held that while the claimant had proved he was prevented from filing his claim earlier for reasons beyond his control, he was not entitled to antedate as the same reasons indicated he was not available for work, the claimant being required to prove that he was ready to accept any offer of suitable employment during the whole period for which he claimed benefit retroactively.

JURISPRUDENCE: Followed in CUB 1210 and applied in CUB 1306.

Appeal of the insurance officer allowed.

June 16, 1953 (Reversed)

CUB 945

ADJUDICATION PROCEEDINGS (Board of Referees: *ultra vires*, unanimous decision—finding of facts—reversed, Disqualification—procedure).

AVAILABILITY (Capable of work, Intention, Pregnancy, Presumption, Restricted to light work. Voluntarily left—joint disqualification).

VOLUNTARY LEAVING (Capability as cause—pregnancy, Just cause shown).

Sections 27(1)(b) and 41(1) of the Act (1946)

A 28-year-old married claimant who had worked as a laundry marker from April 19, 1942, voluntarily left on October 31, 1952, due to pregnancy. She applied for benefit on November 3 stating that she was available for a lighter type of work and expected to be confined on March 31, 1953.

The claimant was disqualified from November 1 to November 14, 1952 on the grounds that she was not unemployed in that she was receiving money equivalent to her normal daily remuneration in the form of vacation pay for two weeks. Two further disqualifications were imposed however which the claimant appealed: for a period of six weeks from November 15 on the grounds that she had voluntarily left without just cause, and for an indefinite period as from November 3 on the grounds she was not capable of nor available for work. The court of referees gave the claimant a period of two weeks from the date of the court's decision to amend her employment registration, in which event she would be deemed available from that date until six weeks before the expected confinement; the court found that the claimant had had good cause for voluntary leaving in view of her statement and that of her doctor that the work was too heavy for her.

Upon appeal, it was held that the evidence was insufficient to rebut the presumption that the claimant was not available for work from the date she claimed benefit as, if she was genuinely seeking work she would, on her own initiative, have broadened her field of employment, irrespective of whether or not she was acquainted with the requirements of the law. It was further held that the court of referees had also erred in predetermining the disqualification under Section 27(1) (b) of the Act, as per the guidance provided in CUB 930 for similar cases.

JURISPRUDENCE: CUB 930 followed.

Referred to in CUB 1220.

Appeal of the insurance officer allowed.

June 16, 1953 (Varied)

CUB 946

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: rehearing—at insurance officer's request).

VOLUNTARY LEAVING (Duration of disqualification, Extenuating circumstances, Grievances raised with employer, Just cause not shown, Prospects of other employment not investigated before hand, Transportation and travel as cause, Working conditions).

Sections 41(1) (1946) and 64 (1940) of the Act

A 36-year-old widow who had worked since March 3, 1952 as a forewoman for an Indian goods manufacturer at Loretteville, P.Q. at \$37.00 per week, voluntarily left on October 21, 1952 on the grounds that the

salary was too low, she paid \$2.50 per week for transportation and finally she could not afford, because of high prices to eat in a restaurant but had to bring her own lunch.

The claimant was disqualified for a period of six weeks for having left without just cause. The court of referees unanimously maintained the disqualification on the grounds the claimant quit her employment because she was refused a salary increase and should have been assured of other employment before she did so. A medical certificate was then received by the local office to the effect that the claimant had to quit due to the bad transportation conditions in the early morning; the claimant submitted a detailed statement regarding the unsatisfactory working conditions. The insurance officer, pursuant to Section 64 of the Act, re-submitted the case to the court of referees which unanimously re-affirmed the disqualification on the grounds that the new facts warranted no change.

The Chairman of the court of referees, in granting leave to appeal, noted that the court considered there was very comfortable transportation available to the claimant in the event the vehicle provided by her employer was inadequate.

Upon appeal, it was held that the claimant should have been assured of other employment before leaving and furthermore that she had failed to establish there had been a change in her contract of service or else that the working conditions had left her no alternative but to leave. While the claimant failed to show just cause, it was noted that she was a widow, the breadwinner for two children, furthermore had shown a sincere desire to work by accepting the employment in the first place and, finally, had found other employment shortly after voluntary leaving, for which reasons her disqualification was reduced to three weeks.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant dismissed but period of disqualification reduced to three weeks.

August 12, 1953 (Affirmed)

CUB 960

ADJUDICATION PROCEEDINGS (Evidence—employer information).

AVAILABILITY (Efforts to find work, Intention of claimant, Prospects of employment, Restricted generally, Union rules).

Section 27(1)(b) of the Act (1946)

A 42-year-old single claimant applied for benefit on December 8, 1952, stating that he had been employed by the Toronto Daily Star as a lino-type operator at \$94.00 a week from April 17 to November 27, 1952, when he was laid off. The employer stated that the claimant was working on call as required, as a member of the substitute staff. The local office reported that the claimant had the same employment status as railway employees on a spare board who could not accept employment elsewhere without jeopardizing their seniority and accordingly were not considered available.

The claimant was disqualified as not available while on the sub-staff of the Toronto Daily Star. The court of referees unanimously maintained the disqualification.

Upon appeal, it was held that the claimant was not available in the sense of being ready to accept at once any offer of suitable employment: he was a member of the substitute staff of a newspaper and as such, unless he was ready to sever that connection, which, apparently, he was not prepared to do, he could only accept employment to which he was directed by his union "when an emergency arises in another plant". To hold that he is available for work would imply that the only employment suitable for him is employment to which he is directed by his union.

JURISPRUDENCE: Followed in CUBs 998 and 1175 and applied in CUB 1519.

Appeal of the claimant dismissed.

August 12, 1953 (Affirmed)

CUB 961

SUITABLE EMPLOYMENT (Availability—disqualification only for refusal, Change from usual area, occupation and wage rate, Conditions—hours of work, housing, shift work, wages, Domestic circumstances, Duration of unemployment—long, Good cause not shown, Married women, Prevailing conditions, Trial period, Voluntarily left last previous employment—reasons subjective).

Section 40(1)(a) of the Act (1946)

A 36-year-old married woman applied for benefit on June 12, 1952 stating that she had been employed by the T. Eaton Company Limited, Calgary, Alta., as a competitive shopper at \$32.00 a week from 1941 to May 31, 1952, when she voluntarily left to follow her RCAF husband to Comox, B.C. On November 4, 1952 she was notified of an offer of employment as a taxi dispatcher at the prevailing rate of pay of \$0.55 an hour, the hours of work being eight a day (split shift) and 44 a week, entailing night and day work. She refused on the grounds the hours of work and wages were unsatisfactory.

The claimant was disqualified for a period of six weeks for her refusal. In her appeal she stated, among others, that she would have to work in a little shack at hours ranging from 5:30 to 12:30 midnight and later on busy nights and there was no special waiting room. The court of referees unanimously maintained the disqualification in view of the long period of unemployment.

Upon leave to appeal being granted, it was held that the salient factor was the claimant's lengthy period of unemployment, approximately five months. While the wage offered was less than previously received, it was the prevailing rate in the district; furthermore, shift work is a recognized practice in industry and "a married woman who desires and must work must conform herself to the exigencies of the labour field". It was held quite possible that the working conditions might not have been as satisfactory as desired but the claimant should have accepted the job and given it a fair trial.

JURISPRUDENCE: Applied in CUBs 1512 and 1576.

Appeal of the claimant dismissed.

August 12, 1953 (Varied)

CUB 964

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision—credibility, Disqualification—extenuating circumstances, Evidence—benefit of doubt, employer information, weight of evidence, Interpretation).

VOLUNTARY LEAVING (Duration of disqualification, Extenuating circumstances, Grievances raised with employer, Haste, Just cause not shown, Prospects of other employment not investigated beforehand, Union relationship and rules, Working conditions).

Section 41(1) of the Act (1946)

The claimant had been employed with an engineering and contracting firm as a labourer, from October 8, 1952 to January 16, 1953. The employer stated that the claimant had "quit", whereupon the claimant explained that he had not paid his union dues for November and December amounting to \$10.00, that a union closed shop was in effect at his employer's premises and that this was contrary to his religious convictions.

The claimant was disqualified for a period of six weeks for voluntary leaving without just cause. The claimant alleged in his appeal, that his foreman had told him to either pay the back dues or be fired. The employer explained that the claimant was one of 19 men referred to the company by the local labour union and that a check with the foreman in question indicated however that the latter had not threatened the claimant with dismissal at any time. The majority of the court of referees maintained the disqualification. The employer member of the court of referees dissented on the grounds that union membership or non-membership cannot be imposed by the employer as a condition of continuing employment and that the claimant should be given the benefit of doubt in view of the conflicting evidence and, all the more so, because he was a recent young immigrant (Netherlands) in this country.

Upon appeal, it was held that the claimant had acted too hastily, leaving when he had no assurance of other work and, furthermore, he should have acquainted himself with the principles of the union when he joined it in order to obtain the employment in question. It was further held, however, that as he was a recent immigrant and there might have been a possible misunderstanding between him and his foreman regarding the payment of union dues, the disqualification should be reduced to one week.

JURISPRUDENCE: Followed to in CUB 1532.

Appeal of the claimant dismissed but period of disqualification reduced to one week.

November 3, 1953 (Affirmed)

CUB 981

ADJUDICATION PROCEEDINGS (Interpretation).

LABOUR DISPUTE (Grade or Class, Participation, Picketing, Sympathetic strike or lockout, Union membership, Violence).

Section 39 of the Act (1946)

The claimants who were members of either the plumbers or electricians' union and employed on various construction projects in the western part of British Columbia, lost their employment in the early part of June 1952

under the following circumstances. During the spring negotiations regarding wage increases and working conditions between the carpenters' union and the General Contractors Association, of which the claimants' employers were members, had been followed by a decision to strike. Commencing June 6, the carpenters adopted the pattern of striking only some projects of different employers. The employers in retaliation voted unanimously on June 11, 1952 in favour of lockout action against the carpenters. At this time a "steering committee" of the Building Trades Council was constituted of members representing all of the 26 or 28 affiliated unions with a view to agreeing on a policy regarding the existing stoppages. The carpenters' picket lines were extended to projects which had been neither "struck" nor "locked out", resulting in a complete stoppage of work in the construction field in the western part of British Columbia.

The claimants were disqualified as participants in the labour dispute, either by having refused to cross or to work behind the carpenters' picket lines or by reason of their membership in one of the affiliated unions represented in the "steering committee". The court of referees unanimously maintained the disqualification.

Upon appeal, it was held that the claimants' argument that members of organized labour are morally compelled to respect picket lines in view of their trade union ethics and accordingly should be relieved of disqualifications, was based upon the false assumption that the workers who refused to cross or work behind picket lines on account of union convictions did not do so of their own volition. As to the argument that there was fear of violence, it was held that any such fear, if it existed, was unreasonable, as there was no intimation whatsoever that physical compulsion was exerted to prevent workers from getting to or continuing in their jobs. As to the argument that there was also fear of never being able to work in their trade on account of the stigma attached to a "scab", it was held that the law could not recognize such fear or risk, if it actually existed, as justification because it stems from the workers' free election to associate themselves in common cause. As to the protection invoked under Section 40(2)(a) of the Act involving the right to refuse employment arising from a labour dispute, and Section 43 of the Act involving the right to refuse employment which would affect the claimants' rights regarding union membership, it was held that these sections applied only where the insured person is already unemployed and is offered a job, there being no legal relationship between the prospective employer and the unemployed person and the consequences of refusal to work evidently not being the same as in a work stoppage due to a labour dispute. As regards the contention that the workers would have been laid off regardless of the strike in view of a bona fide shortage of work not attributable to the labour dispute, it was held that there was work on hand for the claimants to perform at the time they lost their employment, it being noted that employees laid off prior to the stoppage of work were not disqualified.

As regards the case where no picket lines had been set up and it was the employers who took the initiative in stopping work operation, it was held that all the claimants in the present case had failed to establish their entitlement to relief from disqualification because of the participation of their union, acting as the agent of each individual member, in the labour dispute. That the union acted as agent had to be assumed, it was held as there was no evidence whatsoever to indicate that any of the workers concerned took steps to disassociate themselves from the stand taken by the unions' representative on the "steering committee". Union membership, while

not conclusive, was nevertheless an indication of participation and for relief the claimant had to establish that his union acted beyond its mandate and he himself did not endorse its policy in the matter at issue.

It was finally held, that by reason of the claimants' participation, non-union workers of their grade or class also became participants.

JURISPRUDENCE: Applied in CUB 1019, distinguished in CUB 1120, followed in CUB 1521A and referred to in CUB 1627.

Appeal of the claimant's union dismissed.

December 3, 1953 (Affirmed)

CUB 1001

ADJUDICATION PROCEEDINGS (Chairman of the Board of Referees, Umpire—appeal to).

VOLUNTARY LEAVING (Grievances raised with employer, Just cause not shown, Prospects of other employment not investigated beforehand, Suitability of employment as reason—low wages).

Section 41(1) of the Act (1946)

A 24-year-old single claimant who was employed by a meat-packing firm as a butcher at Yellowknife at a gross wage of \$75.00 a week since March 5, 1953, voluntarily left on April 23, 1953, giving as his reason that he was dissatisfied with the working conditions. The employer stated in regards to the claimant's separation, "Did not have the position that was wanted but rehired on April 27".

The claimant was disqualified for a period of six weeks from April 24 under Section 41(1) of the Act and appealed to a court of referees, stating that his immediate supervisor had written to the employer's head office, requesting a \$10.00 raise for him which had been refused, had then advised the claimant to leave and had arranged for his flight out of Yellowknife. The court of referees unanimously maintained the disqualification in the absence of proof of the high cost of living. Leave to appeal to the Umpire was granted the claimant on the basis of his itemized statement of weekly living expenses which showed a total of \$51.25 against a net weekly wage of \$55.11, the Chairman raising the question of principle whether voluntary leaving is justified when the margin between the claimant's take-home pay and his legitimate expenses is so small as to be no encouragement to a young person in improving his economic status.

Upon appeal, it was held there was no justification for a person who was dissatisfied with his wages, leaving his job when he has no immediate prospects of other work. The prudent thing is to remain in employment while looking around for the job and wages he desires, there being the exceptional case where a claimant has no alternative but to leave so as to make possible a search for a better position but such not being the case here where there is a local office in the same town where the claimant could have registered and sought better employment either in Yellowknife or elsewhere. It was further held that the evidence was somewhat confusing in that the claimant had left on April 23 and yet three days later was apparently back in Yellowknife working for the same employer. It was finally held the employment, although not highly remunerative in view of the very high cost of living in Yellowknife, was nevertheless suitable within the meaning of the Act.

JURISPRUDENCE: Followed in CUB 1552.

Appeal of the claimant dismissed.

February 16, 1954 (Reversed)

CUB 1015

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—finding of fact—reversed, Interpretation).

AVAILABILITY (Intention of the claimant, Married women, Pregnancy, Presumption, Voluntarily left—joint disqualification).

CLAIMS MATTER (Married Women's Regulations—first separation).

Section 27(1)(b) of the Act (1946)

and

Benefit Regulation 5A (1951)

A 23 year old married claimant, who had worked as a bank clerk since September 2nd, 1947 and had been married on August 16th, 1952, left her employment voluntary on June 30th, 1953 by reason of pregnancy, expecting to be confined at the end of November.

The claimant was disqualified under Benefit Regulation 5A until August 16th, 1954, and also for an indefinite period as not available for work under section 27(1) (b) of the Act. The claimant in appeal stated that she had been required to resign from the permanent staff at the bank at the time of her marriage, being then immediately rehired as temporary help under her married name. The board of referees unanimously maintained the disqualification for non-availability but removed that under Benefit Regulation 5A on the grounds the separation at the time of marriage was by reason of the employer's rule against retaining married women, with the result that the claimant had been employed for 60 days after her first separation from employment *after* marriage.

Upon appeal, it was held that the effect of the change in employment status from permanent to temporary had already been decided under CUB 832 in which such change was held to not constitute separation from employment within the meaning of Benefit Regulation 5A.

JURISPRUDENCE: CUB 832 followed.

Followed in CUB 1194.

Appeal of the insurance officer allowed.

March 2, 1954 (Reversed)

CUB 1019

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—finding of fact—reversed, Evidence—weight of, Interpretation, Jurisdiction of adjudicating authority re aspect raised by adjudication, Umpire—appeal to).

LABOUR DISPUTE (Grade or class, Participating, Picketing, Sympathetic strike, Union membership, Violence).

Section 39(1) of the Act (1946)

The claimants were employed as carpenters, millwrights, pipefitters and in trades other than that of painters, on various construction projects in Windsor, Ontario, when on June 2, 1953 they lost their employment by refraining from crossing the picket lines set up by approximately 200 painters at buildings and homes under construction which had reached the stage where painters, etc., had become necessary. The picket lines were

in connection with a strike which took place at 8:00 a.m. that day, following a break-down of negotiations for a new agreement between the painters' union and The Windsor Builders and Contractors Exchange and The Greater Windsor Home Builders Association.

The claimants were disqualified under Section 39(1) as having become participants in the labour dispute. The court of referees unanimously removed the disqualification on the grounds the claimants were justified in refraining from crossing the picket lines inasmuch as they had a legitimate fear of reprisals against them, etc. (CUB 918).

Upon appeal, it was held that even if it were considered, which the Umpire was not prepared to do, that the prototype claimant had proved that his fear of violence was genuine and reasonable, he failed to establish that all the other workers in his grade or class had the same fear and, accordingly he was not entitled to relief from disqualification. It is a long established principle that refusal to cross a picket line where no violence is displayed, is evidence of participation in a labour dispute: the argument of the moral compulsion on union members to respect picket lines confuses the voluntary action with the motives which led to it (as pointed out in CUBs 918 and 981); the choice for the worker is a free one and the risk of "social stigma" and loss of union membership benefits cannot be recognized as justification for relief from disqualification "precisely because it stems from the free election made by the workers to associate themselves in a common cause for the betterment of their working conditions and economic needs".

The last paragraph of CUB 918 to the effect that workers were not participating, where the evidence shows that, even though no actual violence was displayed, they refrained from crossing the picket lines on account of a legitimate fear of reprisals against them and their families or material possessions, referred to reprisals of a physically violent nature rather than to moral or material considerations. As regards the argument that there is always a risk of trouble occurring under provocation whenever a picket line is established, it was held that the Umpire "cannot assume that, normally, picketing will result in violence. Picketing, when conducted in an orderly manner, is permitted by the law. To assume that normally it would bring violence is, in effect, tantamount to saying that the Legislator sanctions violence and disturbance of the peace". A worker has a legal right to cross a picket line if he so desires and this right is protected under the Criminal Code. Organized labour, in pleading the inherent risk of violence in picketing places, argues counter to the well known legal maxim "no one should be heard to set up his wrong doing".

Finally it was held that the court of referees had obviously overlooked the most important requirement in this case, namely, that the claimant must prove that no worker of the claimant's grade or class personally participated in the dispute. The chief weakness of the decision of the court of referees was its seeming lack of realistic appraisal, inasmuch as if all the other tradesmen had really wanted to disassociate themselves from the striking workers they would not have refrained from crossing the picket line, it being logical to assume, since they belong to unions affiliated with that of the strikers, that they were prompted entirely by the spirit of union brotherhood and that the painters would not have resorted to force had they decided to show for work.

On the argument that a finding of facts by the local court of referees is binding on appeal upon the Umpire, it was held that this was so only when such finding was supported by substantial and competent evidence.

JURISPRUDENCE: CUBs 918 and 981 applied.

Distinguished in CUBs 1020 and 1034, followed in CUB 1021 and referred to in CUB 1109.

Appeal of the insurance officer allowed.

March 31, 1954 (Reversed)

CUB 1023

AVAILABILITY (Married women, Pregnancy, Presumption, Prospects of employment, Voluntarily left—delayed claim).

Section 29(1)(b) of the Act (1953)

A 27-year-old married claimant who had worked since October 1952 as a stenographer, voluntarily left on June 31st, 1953 because of pregnancy, expecting to be confined about March 14, 1954. She applied for benefit on November 4th, 1953, submitting a medical certificate to the effect that she was in good health at that time.

The claimant was disqualified as not available for work. The court of referees, on the basis of the medical certificate, removed the disqualification unanimously. The insurance officer appealed on the ground the circumstances were practically identical with those in CUB 790.

Upon appeal, it was held that there did not exist in the present case any exceptional circumstances as required by the rule laid down in many decisions concerning women who filed claims for benefit after having voluntarily left their employment on account of pregnancy "this particular claimant had been pregnant for approximately five months when she filed her claim for benefit and apart from any other considerations, it is very doubtful that any employer would have hired her knowing that she would have been available for a short period of time only during which it is altogether likely that her capability for work would have been affected."

JURISPRUDENCE: Followed in CUB 1193q.

Appeal of the insurance officer allowed.

March 31, 1954 (Reversed)

CUB 1026

ADJUDICATION PROCEEDINGS (Interpretation, Jurisdiction of adjudicating authority re aspect raised by adjudication).

VOLUNTARY LEAVING (Availability questionable, Change in income, Just cause shown).

Sections 29(1)(a), 31(1)(f) and 43(1) of the Act (1953)

and

Section 5(2)(e) of the Benefit Regulations (1952)

A 64-year-old claimant who had worked for the federal Department of Veterans Affairs, from February 23rd, 1945 to October 30th, 1953 at \$270.83 a month, voluntarily left because changes introduced in the Civil Service Superannuation Act would have resulted in the amount of his

retirement contributions, \$1400.00, no longer being available to him as a lump sum after January 1, 1954, annuities being provided instead for employees in his age category, 60 to 65, which annuity would have reduced his War Veteran's Allowance. The employer confirmed this and stated the claimant received retirement leave pay from November 1st to December 31st, 1953.

The claimant was disqualified as not unemployed within the meaning of Section 31(1) (f) of the Act and Benefit Regulation 5(2) (e) during the period of retirement leave in that he had received monies equivalent to his normal daily remuneration; the claimant was also disqualified from January 1st, 1954 for having voluntarily left without just cause within the meaning of Section 43(1) of the Act. The court of referees unanimously affirmed the two disqualifications but the Chairman allowed leave to appeal on the grounds that the impending legislation had broken the claimant's employment contract.

Upon appeal, it was held that inasmuch as the claimant's reasons for voluntary leaving were directly connected with his employment, he had just cause. It was held further that such separation raised the question of availability not only because his chances of obtaining other work were slim but because his ultimate motive was to derive an allowance which was conditional on his "inability to maintain himself by following his former ordinary occupation". In view of this doubt, the Umpire suggested that the claimant's case be re-examined so that it might be ascertained whether or not he now meets the requirements of Section 29(1) (b) of the Act.

JURISPRUDENCE: Followed in CUB 1027.

Appeal of the claimant allowed.

April 1, 1954 (Affirmed)

CUB 1029

(French)

ADJUDICATION PROCEEDINGS (Evidence: burden of proof on claimant, employer information, statements before and after disqualification).

VOLUNTARY LEAVING (Grievance not raised, Just cause not shown, Working conditions).

Section 43(1) of the Act (1953)

A 28-year-old married claimant, who had worked as an office clerk at \$45.00 a week since September 25th, 1953, voluntarily left his employment on November 13th, 1953 on the grounds the employer withheld pay for one day's work he had missed during his last week.

The claimant was disqualified for six weeks under Section 43(1) of the Act. The court of referees upheld the disqualification by a majority vote noting that the claimant had been hired at \$40.00 a week and had been drawing \$45.00 at the time of separation. The dissenting opinion was based on the fact the claimant had been hired by the week rather than by the hour and had a good reason for the one day's absence. In later statements, the claimant alleged that he started at 8 a.m. rather than 9

a.m., like the other office staff, and furthermore that the work load had decreased considerably and that he had assumed from the treatment he received that his employer wished him to leave.

Upon appeal, it was held that unless a person's working conditions are very onerous and he had made representations regarding them to his employer, a claimant does not have just cause for voluntarily leaving; in the present case there was no breach of contract and the claimant moreover admitted that he had left his work without even trying to explain to his employer the nature of his grievance.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant dismissed.

April 1, 1954 (Affirmed)

CUB 1030

(French)

VOLUNTARY LEAVING (Change in income, Domestic circumstances—continuing, Extenuating circumstances, Just cause not shown, Prospects of other employment—general, Working conditions).

Section 43(1) of the Act (1953)

A 36-year-old married claimant who had worked as a labourer for a plywood company at Mont-Laurier, Quebec since July 1952, voluntarily left when the employer reduced the working day from ten to eight hours although at the same rate of \$0.78 an hour.

The claimant was disqualified for six weeks under Section 43(1) of the Act. The claimant appealed on the grounds this reduction would not enable him to support his wife and three children; he also stated he had been hired elsewhere as a truck helper but work as such could only commence when the roads improved. The court of referees unanimously removed the disqualification on the grounds that there was a reduction in wages of one-fifth which constituted a breach of contract.

Upon appeal, it was held that the claimant had failed to show just cause inasmuch as there was no evidence that the wages, while not very high, were not at the prevailing rate, and in view of numerous decisions which maintained it was better for a claimant to keep his employment and seek a better job in his leisure hours than to throw himself totally out of work. It was further held however, that inasmuch as the claimant's chances of finding a better position in Mont-Laurier were not as good as in a larger city and the file showed that the claimant had since moved to Montreal, it was possible he had taken this factor into account and considering this and the claimant's difficulties and apprehension a disqualification of only two weeks was reasonable.

JURISPRUDENCE: Followed in CUBs 1532 and 1552.

Appeal of the insurance officer allowed but disqualification reduced from six to two weeks.

April 1, 1954 (Affirmed)

CUB 1032

ADJUDICATION PROCEEDINGS (Commission's responsibility re claims procedures).

UNEMPLOYED (Availability for full-time work despite employment, Earnings, Engaged on own account, Family enterprise, Proof, Separated from regular employment, Subsidiary).

Section 29(1)(a) of the Act (1953)

A 51-year-old married claimant who on January 3, 1953, had filed a claim for benefit, stating that he had been employed as a carpenter by the City of Edmonton from July 17 to October 9, 1952 when he was laid off, admitted on September 30, 1953, upon investigation by an enforcement officer of the Commission, that on October 22, 1952 he had bought a building, which at that time was used as a dwelling with a small store in the front room, and had operated a small retail grocery store with his wife and children. He stated he had tried to "make a go of the business" until January 3, 1953 when he had applied for benefit because there was not enough money in the business to live on; he had been seeking permanent work hoping for some steady employment in an institution like a hospital but had not sought employment through his union because his union dues were not paid up-to-date. He reported he had filed a statement covering the 1952 business with the provincial Department of Industries showing gross sales of \$4,900 and personal withdrawals of \$500.00 and he estimated that his sales since had been in the neighbourhood of \$25,000.00.

The claimant was disqualified on November 19, 1953 for the period from January 3 to September 26, 1953 on the grounds that he was not unemployed. The court of referees unanimously maintained the disqualification on the basis that the claimant was obtaining a living from the store and if he had not been, he could have easily obtained employment as a carpenter in Edmonton where there was practically no unemployment in that trade. Leave to appeal to the Umpire was granted on the basis of uncertainty as to the extent a claimant may participate in a business enterprise without loss of entitlement. The claimant's solicitors appealed on the grounds that the claimant has acted in good faith, noting that the claimant's file had been mislaid in the local office and as a result the claimant had not been notified of any offer of suitable employment.

Upon appeal, it was held that "the governing factor in cases like the present one is the person's intention and satisfactory proof has not been adduced that the claimant at any time sincerely wanted to disassociate himself from the business and re-enter the labour field. . . . That he did not derive the profit which he had expected is irrelevant". It was further held that the mislaying of the claimant's local office file did not affect the issue, although the claimant could have been tested earlier if it had not been, as "it is the duty of any claimant to make personal and serious efforts to find work".

JURISPRUDENCE: Followed in CUB 1556.

Appeal of the claimant dismissed.

May 13, 1954 (Varied)

CUB 1035

ADJUDICATION PROCEEDINGS (Interpretation)**LABOUR DISPUTE (Directly interested, Extension of labour dispute, Grade or class, Loss of employment, Participation, Separation prior to stoppage, Sympathetic strike, Union membership).***Sections 39 and 41 of the Act (1946)*

The claimants, 158 in number, who were ordinarily employed in the fishing industry in the Province of British Columbia, either as shore workers, tendermen or salmon packers, had lost their employment in the late summer or early fall 1952. There had been a dispute between the fishermen proper and the Fisheries Association (consisting of about 13 companies) over the minimum price to be paid for chum salmon. Previously, on July 25th, the United Fishermen and Allied Workers' Union had signed an agreement with the Association on behalf of its "salmon-net fishermen members" covering minimum prices for all except chum salmon, price of which was to be fixed at a later date. This agreement was identical to that reached two days earlier by the Association with the Native Brotherhood, representing local Indians. On August 27th, the two parties failed to settle the price of chum salmon and as a result a number of boat crews returned to port. On September 6th, the union decided to call a strike of salmon-net fishermen; on September 22nd, at a meeting of the Association with the Union and the Brotherhood, the Brotherhood announced that it would sign an agreement and its members would resume fishing on September 24th; on September 23rd, a meeting of the Union local of tendermen voted not to handle the fish declared "hot" and two days later the Union local of shore workers held a similar meeting. The Brotherhood seiners then returned to port. On October 18th, the differences were settled and salmon-net fishing resumed the next day.

The claimants were disqualified as participants in the labour dispute. The court of referees unanimously maintained the disqualification.

Upon appeal it was held that the claimants, through their union, by making their further employment conditional on their employers' acceptance of the terms laid down by their brother fishermen had, in view of the employers' refusal to accept such terms, extended to their own premises a dispute which, if it had not been previously, then became a labour dispute within the meaning of the Act, between themselves and their employers, an additional stoppage of work being created by their action. By passing the resolutions in question the claimants were engaging in a dispute or at least altered the character of the already existing one, thereby committing a positive action of participation.

The contention that some of the claimants could not be said to have engaged in a stoppage of work for their particular grade or class because they were not employed at the time, overlooks the fact that the stoppage of work is not necessarily the particular worker's labour but rather the work carried out at the premises at which the worker is employed. It was further held that the theory of agency (the Union on behalf of each of its members) would not serve as a basis for disqualification, CUB 540 being distinguished; in that case where a partial stoppage became total, employees who had been laid off previously, acquired a positive and direct interest inasmuch as the question of renewing a bargaining agreement covering all employees then became part and parcel of the dispute. It was held in the present case that the claimants at no time had an interest in the original dispute.

Furthermore, it was doubtful whether *all* the claimants had lost their employment because of the decision of their respective locals inasmuch as the evidence indicated some of the canneries had closed previously and there was also satisfactory evidence that other canneries which had closed as a result of the dispute would not have re-opened for the season irrespective of the action of the local unions. It was held accordingly, that only claimants who had lost their employment on or subsequent to the date their union locals adopted the resolutions should be disqualified under Section 39 of the Act.

JURISPRUDENCE: CUB 540 distinguished.

Distinguished in CUB 1532 and applied in CUB1623.

Appeal of the claimants' union allowed for the claimants who had lost their employment prior to dispute's extension.

May 18, 1954 (Affirmed)

CUB 1037

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—credibility).

AVAILABILITY (Prospects of work, Student: not directed and presumed non availability unrebutted, course's compatibility with usual working hours, intention re work, Voluntarily left previously—delayed claim).

Section 29(1)(b) of the Act (1953)

A 23-year-old single claimant who had been employed as a railway freight clerk since 1949 at \$243.00 a month, voluntarily left on the grounds that there was no future, his own boss earning only \$10.00 more per week at the time of his retirement, and that he preferred to return to school, enrolling at the University of Manitoba on September 21st, 1953. The claimant stated that he had worked evenings during the last three years and was still available for such work. The local office reported that the possibility of such employment was extremely remote, with the exception of employment with the railways.

The claimant was disqualified indefinitely as not available for work. The court of referees unanimously maintained his disqualification on the grounds that he should not have left but stayed on even though he enrolled in the University. Leave to appeal was granted by the Chairman because of the principle involved.

Upon appeal, it was held there was no valid reason to interfere with the unanimous finding of the court of referees which was in accord with previous decisions.

JURISPRUDENCE: Followed in CUB 1057.

Appeal of the claimant dismissed.

May 18, 1954 (Reversed)

CUB 1043

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—credibility—varied, Evidence: statements after disqualification).

AVAILABILITY (Disqualification shortened, Restricted as to hours, Student: not directed and presumed non-availability unrebutted, course's compatibility with usual working hours, intention re work).

Section 29(1)(b) of the Act (1953)

A 26-year-old school claimant, who was a fourth year pharmacy student at the local university was dismissed on November 1953 from his part-time (23 hours weekly) employment as a pharmacy clerk in a drug store since January, 1952, because he "could not work the number of hours which would have satisfied the employer".

The claimant was disqualified for an indefinite period as not available for work. The claimant stated that he had been a student for four years and had worked in a pharmacy for three years averaging 30 hours per week and, during vacation, 45 to 50 hours, and that he was available for work on the same basis as previously during which unemployment insurance contributions had been assessed against him. The court of referees unanimously maintained the disqualification but terminated it as of January 11th, 1954, the day prior to the court's hearing in view of the claimant's statement at the hearing that his presence at fourth year courses was not obligatory and he could absent himself in order to work a greater number of hours, so as to satisfy an employer.

Upon appeal, it was held that the claimant had failed to rebut the presumption that he was not available for work. Availability, while primarily a subjective matter, is also an objective one that must be determined from the claimant's prospects of employment in relation to a certain set of circumstances beyond his control or which he has deliberately created. It was considered evident that the claimant's chances of employment, in relation to the restriction because of his studies, were too limited it being noted that the claimant had not yet succeeded in finding employment even three months later. Accordingly an indefinite disqualification was re-imposed.

JURISPRUDENCE: Followed in CUB 1057.

Appeal of the insurance officer re duration of disqualification allowed.

June 22, 1954 (Reversed)

CUB 1044

ADJUDICATION PROCEEDINGS (Evidence: employer—finding—information, Interpretation).

MISCONDUCT (Industrial offence, Rules not followed, Union activities).

VOLUNTARY LEAVING (Tantamount to voluntary leaving, Union relationships).

Section 43(1) of the Act (1953)

A 40-year-old claimant who had been employed by the Canadian Westinghouse Company as a machine molder, from June 13th, 1940 to October 30th, 1953, was dismissed because of a company rule that anyone receiving a jail sentence was liable to dismissal. The claimant had

been arrested, along with approximately ten other persons while picketing at the Wallace Barnes plant and had been charged with obstruction to which he had pleaded guilty, a \$50.00 fine and seven days jail being imposed, and the claimant having served three days before an appeal was taken by his union on his behalf.

The claimant was disqualified for six weeks as having voluntarily left his employment inasmuch as he had been responsible for losing it. The court of referees, noting that the claimant received two distinct warnings from his employer prior to his arrest, found that he had lost his employment under circumstances equivalent to voluntary leaving but as there had been a misunderstanding between representatives of the employer and the union, it felt a reduction from six to three weeks' disqualification was warranted.

Upon appeal, it was held that misconduct must be interpreted in its industrial sense and the test where the offence was committed outside the scope of a claimant's employment, is whether the offence bears such a relationship to his kind of job as to render him unsuitable for it, which test was not met in the present case, the claimant being absent on leave and the misconduct occurring elsewhere than that at his own employer. CUB 569 was distinguished as involving a conviction for theft which made the claimant no longer suitable to his employer because of a large amount of valuable material stored on the latter's premises.

JURISPRUDENCE: CUB 569 distinguished.

Applied in CUB 1065.

Appeal of the claimant's union allowed.

June 22, 1954 (Affirmed)

CUB 1045

ADJUDICATION PROCEEDINGS (Commission's responsibility re policy. Jurisdiction of adjudicating authority re legislation).

CLAIMS MATTERS (Married women—not just cause solely and directly connected with employment).

VOLUNTARY LEAVING (Change of residence as cause, Domestic circumstances—marriage, Just cause shown, Married women leaving area, Transportation as cause).

Section 43(1) of the Act (1953)

and

Benefit Regulation 5A (1951)

A 19-year-old claimant who had been working in a town nine miles away from where she resided, married on June 20th, 1953 and took up residence with her husband in another town 17 miles away from the premises of her employer where she continued to work, travelling back and forth by bus. The claimant then voluntarily left on September 6th, 1953, because the bus service was unsatisfactory and she had a prospect of other work where she resided. This prospect materialized on September 14th, the claimant being laid off on November 20th, 1953 because of a shortage of work whereupon the claimant applied for benefit.

The claimant was disqualified for two years from the date of her separation from her last employment, under the Married Women Regulation. A majority of the court of referees maintained the disqualification, the dissent being on the grounds the claimant's voluntary leaving had been for reasons directly connected with her employment.

Upon appeal, it was held that while the claimant's good faith could not be doubted inasmuch as she was out of work through no fault of her own and had had just cause for voluntary leaving her second last employment within the meaning of Section 43(1) of the Act, she failed to meet at any one of the conditions laid down in Benefit Regulation 5A. It was held, as per CUB 772, that just cause for the purpose of that Regulation means only those reasons which are solely and directly connected with the employment, among which could hardly be included transportation difficulties because of a change in one's domestic or personal circumstances. It was held that the present case was similar to that in CUB 848 in which undeserved hardship had resulted when a married woman was disqualified for misconduct which was not proved. For this reason the Umpire suggested that the Commission take remedial action to revise the Regulation in question.

JURISPRUDENCE: CUB 772 applied and CUB 848 referred to.

Distinguished in CUB 1068 and applied in CUB 1358.

Appeal of the claimant dismissed.

June 24, 1959 (Reversed)

CUB 1049
CUC 31
(French)

ADJUDICATION PROCEEDINGS (Board of Referees: *ultra vires*, unanimous decision—finding of fact—reversed, Commission's responsibility re adjudication procedures, disqualification procedure and policy, Jurisdiction of adjudicating authority re aspect raised by adjudication re legislation).

CLAIMS MATTERS (Suspension of benefit pending appeal).

UNEMPLOYED (Contract of service, Full working week—hours shifts etc., Holidays—single holiday).

Sections 31(1)(c) and (e), 50 and 67 of the Act (1953)

The claimant had been working as a carder at the cotton mill of the Dominion Textile Company at Montmorency, P.Q., when he filed a short-time initial claim on July 23rd, 1953. On November 27th, the local office referred the insurance officer the claimant's statement that he was now working four days a week.

The insurance officer disqualified the claimant in respect of Saturdays from October 31st because these days "were comprised in a calendar week during which he had worked the full working week", being a short-time claimant who had worked four days in what was ordinarily a five-day week. The court of referees removed his disqualification on the grounds that the claimant had been available to the employer six days per week.

The Chief Claims Officer of the Commission appealed to the Umpire on the grounds first, that the decision of the court of referees was *ultra vires*

in that it ruled on a question of coverage and secondly, that the claimant should have been disqualified from benefit under paragraph (c), not paragraph (e), of section 31(1). The Unemployment Insurance Commission referred the question whether the plant had a five- or six-day working week, to the Umpire under section 50 of the Act.

Upon appeal, it was held first that there was no provision of the Act allowing the Commission to withhold payment of benefit contrary to section 67 of the Act. On the main issue, it was decided that the Saturdays in question were recognized holidays within the meaning of section 31(1)(c) of the Act in view of the collective bargaining agreement which explicitly provided for an ordinary working week of 40 hours and implicitly for Saturdays not being normal working days, the facts showing that during the last two years the employer had in fact treated Saturday as a holiday. It was however, directed, in accord with CUB 276A, that benefit be paid the claimant for the Saturdays in question pursuant to section 67 of the Act. The question of any anomaly with respect to workers on a five-day week was referred to the Commission for whatever remedial measures might be felt necessary.

JURISPRUDENCE: CUB 276A followed.

Applied in CUB 1180 re suspension of benefit and in CUB 1098.

Appeal of the insurance officer allowed.

June 24, 1954 (Affirmed)

CUB 1050

CLAIMS MATTERS (Married women—leaving without just cause).

LABOUR DISPUTE (Attributable to labour dispute, Loss of employment).

VOLUNTARY LEAVING (Domestic circumstances—marriage, Just cause not shown).

Benefit Regulation 5A (1951)

A 28 year old claimant who had worked as a punch press operator from September 10th, 1947 to June 23rd, 1953, applied for benefit on November 24th, 1953 on the grounds that she had lost her employment on June 23rd by reason of a strike at her employer's premises which had terminated with a general resumption of work the day preceding her application for benefit. The claimant provided the additional information that she had been married on October 10th, 1953 and that her separation was for reasons solely and directly connected with her employment, the strike.

The claimant was disqualified under the Married Women's Regulation. The court of referees unanimously maintained the disqualification.

Upon appeal, it was held that as a strike or lock out does not, in itself, break a contract of service (CUB 321 and CUB 760), the separation in the present case occurred when, although the employer resumed operations, the claimant did not return to work. It was held that the claimant had voluntarily left her employment without just cause.

JURISPRUDENCE: CUBs 321* and 760 applied.

Applied in CUB 1627q.

Appeal of the claimant's union dismissed.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

July 14, 1954 (Reversed)

CUB 1052

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous—finding of fact—reversed, Evidence: employment history—statement after disqualification).

UNEMPLOYED (Availability for full-time work despite employment, Earnings, Engaged on own account, Proof, Subsidiary).

Section 29(1)(a) of the Act (1953)

The claimant, a tailor by trade, had been on claim for benefit since April 25, 1952, when in October 1953 he declared he was in business on his own account and following an investigation, filed a statement on December 21, 1953 in which he stated that he had opened a tailoring shop in another town on June 1, 1953, sub-leasing the space for \$10.00 a month from June to September 1953 and for \$12.00 from September 1 on from a new principal tenant; he stated however, that he did not make more than \$3.00 to \$5.00 a week up to October 1953. The first "landlord" stated that the claimant had rented space in one of the branches of his cleaning and dyeing establishment; the second "landlord", who owned a clothes-cleaning business, stated that the space occupied by the claimant was worth \$25.00 per month but he only charged \$12.00 in view of the telephone answering service provided by the claimant.

The claimant was disqualified from the date of his second initial claim June 29, 1953, up to October 3, as having failed to prove he was unemployed. The court of referees unanimously removed the disqualification for the period up to September 1 on the grounds that the claimant's arrangement was to pay \$10.00 a month for space in the landlord's shop if he obtained new business thereby from the landlord's customers but that the arrangement had never been in force because of lack of business; accordingly the claimant had been available throughout this period for any suitable employment which would have been offered.

Upon appeal, it was held that the claimant had failed to prove he was unemployed, as required by numerous previous decisions involving claimants with job on their own account, in which it was emphasized that the intention of the claimant and not the amount of profit or the volume of business, was the criteria. In the present case the claimant was in business for the purpose of exercising his trade full-time and, even though his profits were not as great as he would have wished, he does not appear to ever had the intention of abandoning his undertaking, rather the contrary inasmuch as he was able by September 1953 to declare that his income had become satisfactory in view of the customers he had acquired; in effect, the claimant had withdrawn from the labour market at the very outset and therefore had placed himself in a position incompatible with the requirements of the Act.

JURISPRUDENCE: Followed in CUB 1566.

Appeal of the insurance officer allowed.

September 20, 1954 (Reversed)

CUB 1077

CAPABLE OF WORK (Availability affected as result, Permanent incapacity, Proof, Suitability for employment likely to be offered).

Section 29(1)(b) of the Act (1953)

A 65 year-old claimant, who had been employed as a stock-keeper by the provincial Hydro Electric Commission from 1928 to January 30th, 1953, when he was retired on a pension applied for benefit on July 31st, 1953. The local office reported it was doubtful whether the claimant could perform any work as he suffered from continuous involuntary limb movements. The claimant submitted a medical certificate dated August 18th, to the effect he was now able to do light sedentary work.

The claimant was disqualified for an indefinite period as not capable of work. The Special Placements division of the local office reported it would be extremely difficult, although not impossible to place the claimant in the assigned classification of "Weighmaster (Coal Yard)". The court of referees unanimously maintained the disqualification.

On the basis of the opinion from the claimant's union, the National Union of Public Service Employees, that the claimant had been employed, without being required to conform to regular hours, in their office from October 26th to December 4th, 1953, to assist the clerical staff in sorting, handling and distributing some of the data and had been paid \$70.00, the case was resubmitted to the court of referees which unanimously maintained the earlier decision. The claimant was referred at his own request to the medical Out-Patient Department of a D.V.A. Hospital for examination; the medical report established he had been suffering from a progressive neurological disorder for the last 15 years and was unemployable at the present time and in future.

Upon appeal, it was held that the general principle in such cases was that enunciated in CUB 267 whereby a claimant was considered as not capable nor available, when there was no reasonable probability for him to obtain or perform any work. As provided in CUB 326, the capability of a permanently disabled claimant must be considered in relation to the degree of such probability.

The claimant had followed insurable employment until his retirement for reasons other than disability and there was no evidence his capability had materially worsened up to the day of his claim. While "a medical certificate . . . can never be used as an easy substitute for adjudication", this being a matter for the adjudication authorities, it was reasonably probable that the claimant could perform some work on the day of his claim. The claimant's work in the union office was evidence that he could perform work of such kind as is ordinarily done under contract of service. It had been noted also that the local office had a Special Placements Division for employable applicants who suffered from physical handicapped. As regards whether the claimant could perform such work under conditions that ordinarily accompany it, in CUB 408 a claimant was found capable upon a report that there was work "commensurate with his ability"; it is to be inferred that the disabled need not be in a position to compete with the able as to the conditions that ordinarily accompany the performance of certain work, it being considered sufficient that the claimant's powers of labour be a merchantable article in any of the well-known lines of the

labour market. The claimant, having received \$12.00 a week as a part-time clerk, was, therefore, deemed to have been able to perform clerical work under ordinary conditions.

The present case was distinguished from CUB 338 in which motives of charity were involved, according to the employer. The present claimant's retirement after 25 years service indicated he could live without asking for help.

It was finally held that there was a probability of the claimant obtaining work commensurate with his ability in a city of that metropolitan size on the basis of the work he had performed for the union and the facilities of the Special Placements Division, it being incidentally noted that an "handicapped person is not expected to make the same general search for work as an unhandicapped individual".

JURISPRUDENCE: CUBs 267* and 626 referred to, CUB 408 applied and CUB 338 distinguished.

Referred to in CUB 1453 and applied in CUB 1597.

Appeal of the claimant's union allowed.

October 29, 1954 (Reversed)

CUB 1086

VOLUNTARY LEAVING (Change of residence as cause, Domestic circumstances—continuing, Grievances raised with employer, Just cause not shown, Proof—onus on claimant, Prospects of other employment not investigated beforehand, Working conditions).

Section 43(1) of the Act (1953)

The claimant had been employed as a travelling sales supervisor for a soap company in Toronto at \$396.00 a month when he voluntarily separated on January 29th, 1954 giving as his reasons that he was not permitted to transfer to another department and his work required him to be away from his home five or six nights a week. The claimant stated that he indicated to his employer upon commencing employment in 1948, that he would prefer to work in the marketing and advertising branch of the company but had been assigned nevertheless to sales. Since his marriage in 1952, he had taken the matter up with the employer a number of times; finally in December 1953 he had declined a promotion in sales entailing his transfer to Halifax and accordingly had resigned.

The claimant was disqualified for four weeks as having voluntarily left his employment without just cause. The court of referees unanimously removed the disqualification on the grounds the claimant had done everything possible to have the situation remedied.

Upon appeal, it was held that the burden of proof of just cause lay on the claimant because he had voluntarily left. The claimant had failed to show that he had had to put up with more inconvenience than that ordinarily experienced by others in the same line of work. It was held that the reasons advanced, while extenuating circumstances, were of a purely personal nature and coupled with the fact that he apparently neglected to assure himself of other employment, could not constitute just cause for leaving.

JURISPRUDENCE: Followed in CUBs 1532 and 1552.

Appeal of the insurance officer allowed.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

October 29, 1959 (Affirmed)**CUB 1090****VOLUNTARY LEAVING (Grievance raised with union, Just cause shown, Union relationships, Working conditions).***Section 43(1) of the Act (1953)*

A claimant, who had been employed as a quartermaster with a navigation company in Vancouver for approximately two years lost his employment on March 25th, 1954. The employer stated that it had had no alternative under the existing bargaining agreement but to abide by the union's request for his dismissal even though his work has been satisfactory, because he was six or seven months in arrears in his union dues. The claimant reported that he had had a dispute with his union regarding the terms of the holiday clause in the bargaining agreement entered into by his union on December 1st, 1953; despite a protest from the crew of his ship, the union has signed the agreement and he has lost seven days holiday pay; as a result he has refused to pay his back dues until his claim for these holidays was settled.

The claimant was disqualified on the grounds his failure to maintain his union membership was equivalent to voluntarily leaving without just cause. The court of referees unanimously removed the disqualification on the grounds the claimant has taken all reasonable measures to have his grievance with his union remedied, the latter having simply taken advantage of the "union-shop" provision in the bargaining agreement.

Upon appeal, it was held that the claimant had left his employment voluntarily inasmuch as he had refused to pay his dues and presumably knew he would lose his employment as a result. It was further held, however, that the claimant had a substantial grievance and as he apparently had exhausted all the means at his disposal to have it remedied, he had showed "just cause" under the circumstances. The Umpire referred to an almost identical British decision No. 4501 (1920) as a precedent and distinguished the present case from British decision No. 1673/25 submitted by the insurance officer in which the claimant had refused to pay an extra union subscription towards the unemployment fund of his union federation.

JURISPRUDENCE: B.U. 4501 (1920) followed and B.U. 1673/25 distinguished.

Followed in CUB 1532.

Appeal of the insurance officer dismissed.

October 29, 1954 (Reversed)**CUB 1093****AVAILABILITY (Capable of work, Pregnancy of claimant, Presumption).****CAPABLE OF WORK (Availability affected as a result, Pregnancy, Sickness benefit).***Sections 29(1)(b) and (3) of the Act (1953)*

The claimant, who had worked as a clerk typist from November 1950 to November 30th, 1953, applied for benefit from January 19th, 1954. On May 31st, she informed the local office she expected to be confined on or about July 18th, 1954.

The claimant was disqualified from 6 weeks before such date and for so long as she failed to prove she was available for work. The claimant

invoked section 29(3) as relief. The court of referees unanimously removed the disqualification, distinguishing CUBs 620, 766, 819 and 874 on the grounds the claimant has been receiving benefit before the six weeks prior to confinement.

Upon appeal, it was held "obvious that pregnancy cannot in any way be assimilated to injury or quarantine nor can it be properly defined as being per se a condition of unsound health. It is a natural condition for a woman and . . . her incapacity cannot be recognized as being due to illness within the meaning of subsection 29(3)." On the other hand, as her contention was an admission that she was not capable, she accordingly failed to rebut the presumption she was not available for work.

JURISPRUDENCE: Followed in CUB 1094, 1215 and 1558, and applied in CUB 1597.

Appeal of the insurance officer allowed.

October 29, 1954 (Reversed)

CUB 1094

ADJUDICATION PROCEEDINGS: (Board of Referees: unanimous—credibility reversed, Evidence: medical certificate, Interpretation).

AVAILABILITY (Capable of work, Pregnancy of claimant, Presumption of non-availability).

CAPABLE OF WORK (Pregnancy, Sickness Benefit).

Sections 29(1)(b) and (3) and 30(3)(a) of the Act (1953)

The claimant who had worked as a presser for a firm of dry cleaners since March 30th, 1953, was released because of shortage of work on November 12th, 1953. On March 30th, 1954, she informed the local office by letter that she had been admitted to the hospital the previous day, March 29th. She then completed the form sent by the local office on April 7th, in which she reported that her illness was caused by an infection of a muscular gland; in an accompanying letter she stated that she had given birth on April 1st, 1954.

The claimant was disqualified retroactively to February 19th, 1954, for so long as she failed to prove she was available for work. The claimant stated that she had expected the birth of the child on May 9th, 1954 but felt the birth had been hastened by the treatment for her infection. The hospital reported that a full-term baby had been born to the claimant. The only medical certificate was that of the claimant's doctor, dated April 17th, to the effect that the claimant had entered the hospital on account of an abscess in the right groin. The court of referees unanimously removed the disqualification on the ground such abscess was covered by Section 29(3) and that pregnancy is also an illness which may be referred to as a "bodily disablement" in view of Section 30(3)(a).

Upon appeal, it was noted that the court of referees' only disagreement with the insurance officer was with respect to the relief afforded by Section 29(3). It was held that the most reliable evidence showed she gave birth to a full-term baby and therefore established the presumption of the claimant's incapacity and consequent non-availability, for six weeks

prior to confinement. In accordance with CUB 1093, as the claimant's incapacity was by reason of pregnancy, it did not fall under Section 29(3). It was further held that a distinction was intended by the legislator in his use of the term "bodily disablement" and "disease".

JURISPRUDENCE: CUB 1093 applied.

Followed in CUBs 1215 and 1558.

Appeal of the insurance officer allowed.

November 19, 1954 (Affirmed)

CUB 1097

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision—finding of fact, Evidence: burden on claimant, employment officer's opinion, medical certificate, presumption, weight of evidence).

AVAILABILITY (Capable of work, Domestic circumstances, Pregnancy of claimant, Presumption of non-availability, Proof, Prospects of employment, Voluntarily left—just cause).

Section 29(1)(b) of the Act (1953)

The claimant, a married woman, who had worked as an office cleaner from March 3rd to May 1st, 1954, voluntarily left her employment for health reasons and then claimed benefit, registering for work as a wrapper. She stated that she expected to be confined about December 24th, 1954, and submitted a medical certificate to the effect her doctor had "advised her to look for light work which fitted her condition and for which her ability was 100%."

The claimant was disqualified as not available for work. A majority of the court of referees removed the disqualification on the grounds that the work she was required to do was "above the average requirements for that type of work and would be a challenge to the physical strength of any woman and quite a job even for a man". The court was also satisfied of the claimant's willingness and physical strength to do lighter work and of the availability of such work in that city. The Chairman of the court of referees dissented on the sole basis of jurisprudence in which the presumption of non-availability was rebutted only if there were special distressed circumstances and reasonable opportunities of part-time work.

Upon appeal, it was held, on the basis of the court of referees' finding, that the claimant's explanation for having left her employment was plausible and the unusually arduous nature of the work constituted one of those special circumstances which must be taken into consideration. It was held on the other hand, that the claimant who was at a very early stage of pregnancy and apparently in good health had registered almost immediately for less strenuous full-time work which she was certified as capable of doing and which in the opinion of the local office she could reasonably expect to obtain. It was held accordingly that she had successfully rebutted the presumption that she was not available.

JURISPRUDENCE: Referred to in CUB 1502.

Appeal of the insurance officer dismissed.

December 8, 1954 (Varied)

CUB 1100
(French)

ADJUDICATION PROCEEDINGS (Board of Referees: claimant present, examination of witnesses, unanimous decision—credibility—varied, Disqualification—extenuating circumstances, Evidence—employer information, statements after Board of Referees, Rehearing on Umpire's referral, new facts needed, Umpire—hearing).

MISCONDUCT (Extenuating circumstances, Insubordination, Rules not followed).

VOLUNTARY LEAVING (Grievances raised with employer, with union, Haste, Prospects of other employment not investigated beforehand, Tantamount to voluntary leaving).

Section 43(1) of the Act (1953)

The claimant who had worked for a firm of fur dressers and dyers in Montreal since March 1952, had lost his employment on June 16, 1954, under the following circumstances. The claimant worked in a department where many types of work were performed to which the various employees could be assigned without regard, under the collective agreement in effect, to their rate of remuneration, the individual worker's rate being proportional to the experience and skill acquired in the performance of all the tasks in general. The claimant, who had started at \$0.60 an hour and had been earning \$0.88 an hour since 1953, had asked for a raise of \$0.05 an hour which had been refused him. When the foreman assigned the claimant to the bleaching of pelts, the latter then refused unless he was granted an increase in salary. He was thereupon dismissed. The employer refused to reinstate the claimant even at the same salary despite his union's representations including reference to the claimant's difficulty in understanding French and English. The claimant, eventually found employment elsewhere on August 23 at \$0.95 per hour.

The claimant was disqualified for six weeks under Section 43(1) of the Act and the court of referees unanimously maintained the disqualification. The claimant's union then appealed to the Umpire. Two hearings were held, the second for the purpose of hearing evidence directly from the claimant and the company's superintendent.

Upon appeal, it was held that the claimant's demeanour was such that his employer was forced to dispense with his services. The most elementary prudence should have suggested to the claimant, he either submit his grievances to his union before or find other employment according to his taste before acting in a way he knew or should have known would end his employment. In view of the plausibility of the representations regarding the claimant's language difficulty, the period of disqualification was reduced to three weeks.

JURISPRUDENCE: Distinguished in CUB 1532 and followed in CUB 1552.

Appeal of the claimant dismissed but disqualification reduced to three weeks.

December 8, 1954 (Reversed)

CUB 1101

ADJUDICATION PROCEEDINGS (Board of Referees: *ultra vires*, unanimous decision—reversed, Disqualification—revision, Insurance officer—generally, Interpretation, Jurisdiction of adjudicating authority *re aspect* raised by adjudication, *re policy*, Umpire—decision).

AVAILABILITY (Intention of claimant, Married women, Pregnancy of claimant, Prospects of employment).

CLAIMS MATTERS (Married Women's Regulation).

Section 29(1)(b) of the Act (1953)

and

Section 5A of the Benefit Regulations (1951)

The claimant who had worked as a bookkeeping machine operator since June 2nd, 1952 and was married on July 26th, 1953, separated from her employment on April 29th, 1954, when her employer dispensed with her services because of her pregnant condition, the claimant expecting to be confined in October 1954.

The claimant was disqualified under Benefit Regulation 5A and also under Section 29(1)(b) as not available. Upon information from the employer that the claimant was requested to resign because of her state of pregnancy, the insurance officer removed the disqualification for non-availability. The court of referees removed the other disqualification on the grounds that Regulation 5A did not apply.

Upon appeal, it was held that the only two grounds of exception to Regulation 5A which the claimant could plead in view of not having 60 days of employment since her first separation after marriage, had not been met; her separation was not in consequence of her employer's rule against retaining married women nor a discharge on account of shortage of work. It was also noted that the court of referees had chosen not to follow CUBs 820 and 845, to which it had been referred by the insurance officer, despite the principle laid down in earlier decisions that "it is desirable for and essential to the proper functioning of the Act that the decisions of the Umpire should be followed by the courts of referees when applicable". It was also held not to be within the Umpire's province to decide whether or not the court of referees was competent.

JURISPRUDENCE: CUBs **820** and **845** followed.

Appeal of the insurance officer allowed.

December 8, 1954 (Reversed)

CUB 1102

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous—finding of fact—reversed, Evidence: burden on claimant, employment officer opinion, employer information, statements after board of referees, Umpire—decision).

AVAILABILITY (Circumstances beyond claimant's control or deliberately created, Domestic circumstances, Intention of claimant, Prospects of employment, Restricted as to area and seasons, Voluntarily left—joint disqualification).

VOLUNTARY LEAVING (Availability—joint disqualification, Domestic circumstances—temporary—continuing, Just cause shown, Proof—onus on claimant, Transportation and travel as cause).

Sections 29(1)(b) and 43(1) of the Act (1953)

The claimant who resided at Iles-de-la-Madeleine had voluntarily left his employment at Sept Iles after having worked as a labourer from August 5th to August 31, 1953 and as a carpenter from September 1 to November 30. He was reported to have originally given as the reason, lack of work; the employer stated otherwise.

The claimant was disqualified for voluntarily leaving without just cause and as not available for work. The claimant appealed stating that he had left because he had to come home to prepare his house for the winter and take care of his wife and four children. The court of referees unanimously affirmed the disqualification, being apparently guided by CUBs 610, 727, 748 and 750, and finding the claimant had not established that the circumstances had made it necessary for him to return where the chances of employment were very slim.

Leave to appeal was granted the claimant who then stated that he could not find lodgings for his family on the mainland and had left in time to take the last boat. Claimant's counsel represented among others that, as he lived on the largest of the Islands (4,500 population), he could expect to find work there and at least a reasonable interval of time should be allowed for that purpose. The Chief Claims Officer submitted that the claimant had just cause for leaving "as he had tried without success to obtain accommodation" and could not be expected to live away from home indefinitely; furthermore, consistent with CUB 748, there was no indication the claimant would not have accepted employment any place where his family could be moved, there were some possibilities of employment on the island and the claimant had not restricted the type of work he would accept there or on the mainland.

Upon appeal, it was held that the Chief Claims Officer's word that "there were reasonable chances of obtaining employment on the Island", was acceptable but as there were no details given regarding the labour market situation it was impossible for the Umpire to determine what would be a reasonable interval of time before disqualification for non-availability could be imposed.

JURISPRUDENCE: CUB 748 distinguished.

Distinguished in CUB 1409.

Appeal of the claimant allowed.

December 8, 1954 (Varied)

CUB 1103

ADJUDICATION PROCEEDINGS (Board of Referees: procedure, unanimous decision—varied, Disqualification—extenuating circumstances—procedure, Evidence—statements before and after disqualification, Insurance officer generally, Interpretation).

AVAILABILITY (Disqualification shortened, Domestic circumstances, Prospects of employment, Restricted as to area, occupation, travel, Voluntarily left—joint disqualification).

VOLUNTARY LEAVING (Availability—joint disqualification, Change in residence as cause, Duration of disqualification, Just cause not shown, Married women leaving the area, Prospects of employment—not investigated beforehand).

Sections 29(1)(b) and 43(1) of the Act (1953)

The claimant who had been employed as a secretary from November 1952 to April 15th, 1954, voluntarily left because her husband was transferred to another RCAF Station. The claimant took up residence with her husband in a small community, 22 miles from his new station, and applied for benefit registering as a stenographer.

The claimant was disqualified for voluntary leaving without just cause for a period of four weeks. The local office reported that the claimant had stated that she was unable to work outside her own community as she had no transportation and she would accept work only as a stenographer and that the opportunities for such work were practically nil; the claimant subsequently stated that she would accept work in any nearby town if the local office could find daily transportation for her. The court of referees unanimously affirmed the disqualification and also found, pursuant to the insurance officer's reference, that she was not available for work although it set no disqualification date, the insurance officer then setting up the overpayment as of one week before the claimant's hearing. The claimant appealed on July 5th, stated that she now had transportation to the air station and to another town and had had her claim transferred to the local office under which these places came. The local office advised that the claimant had accepted work on August 3rd in the town where the local office was situated. The claimant stated that she travelled daily with her husband depending on transportation which was subject to his being on call 24 hours a day.

Upon appeal, it was held that it was not the intention of the Act to provide benefit to persons who voluntarily leave their employment in large centres to move to small communities where there are no reasonable opportunities of employment and no suitable transportation is available between adjacent industrial areas and that this principle was all the more applicable in this case of a married woman following her husband to a small village where the employment prospects were non-existent and there ordinarily was no convenient transportation to nearby places of sizable population. While the disqualifications were maintained, that for non-availability was terminated as from the date the claimant transferred her registration to the local office in view of the acceptable arrangements for transportation. It was also noted there was no valid reason for reducing the disqualification under Section 43(1) nor for fixing the date of disqualification for non-availability as of the week before the hearing of the court of referees.

JURISPRUDENCE: Followed in CUB 1184 and applied in CUB 1516.

Appeal of the claimant dismissed but disqualification periods amended.

January 7, 1955 (Affirmed)

CUB 1109

LABOUR DISPUTE (Participating, Picketing, Premises, Sympathetic strike, Union membership, Violence, Voluntary leaving).

Section 41 of the Act (1953)

The claimant was a member of the Canadian Textile Council who lost his employment with Harding Carpet, Brantford when 42 employees who belonged to another union, the Canadian Brussels Carpet Weavers Benefit Association, walked out of the plant at 2:00 p.m. on February 16, 1954, over a dispute with the company regarding the period of time needed to train apprentice weavers (creelers) and set up a picket line at 7:00 a.m. next morning to the main entrance to the plant. Some of the 214 workers who were excluded from crossing the picket line set up by the union of which they were not members, made an attempt to cross it while others, like the claimant, stood by the main entrance for 15 minutes before dispersing. It was considered not advisable for the remaining few workers who were on night shifts to attempt to cross the picket line.

The claimant was disqualified for the duration of the stoppage of work under Section 41 of the Act. The court of referees unanimously maintained the disqualification, pursuant to CUBs 918 and 1019 on the grounds that he had become a participant of the dispute. The Canadian Textile Council appealed to the Umpire and a hearing was held but as no verbatim transcript of the hearing of the court of referees had been made, the Umpire directed a rehearing for that purpose, which was held.

Upon appeal, it was held that the evidence showed the picketing was peaceful and orderly, there were no real threats of violence and none of the employees who were not directly involved had made a serious and honest attempt to cross the picket line. If the employees had been really interested in exercising their undeniable right to work, they would have tried to convince the picketers, and failing that, called upon the local police. The contention of the Council's representative that the presence of police officers often provokes violence was dealt with in CUB 1019: to assume that the presence of police officers is not normally a guarantee that the safety of workers would not be imperilled is "tantamount to saying that the Legislator sanctions violence and disturbance of the peace". It was held finally that the failure to make a serious and honest attempt to cross the picket line was "under the circumstances, equivalent to a positive and voluntary act of participation in that it added strength to the cause of the strikers who were then placed in a better bargaining position." Mediation by the Council in no way relieved the individuals of this responsibility.

JURISPRUDENCE: CUB 1019 referred to.

Referred to in CUB 1532.

Appeal of the claimant's union dismissed.

January 7, 1955 (Reversed)

CUB 1111

ADJUDICATION PROCEEDINGS (Board of Referees: procedure, unanimous decision—reversed, Commission's responsibility re adjudication procedures, Interpretation).

AVAILABILITY (Married women, Pregnancy, Presumption, Restricted to part-time, Voluntarily left in first place—disqualified only as not available).

VOLUNTARY LEAVING (Availability—disqualified only as not available, Capability for work as cause—pregnancy, Suitability of employment as reason).

Sections 29(1)(b) and 43(1) of the Act (1953)

A married claimant who had worked as a teller in a bank since 1949 voluntarily left on June 4, 1954 by reason of pregnancy, expecting her confinement on September 25, 1954. The claimant stated that she would take office work where she would not meet the public.

The claimant was disqualified as not available for work. The court of referees distinguished CUBs 530 and 620 on the grounds that there was no illness from pregnancy in the present case and removed the disqualification, imposing one of 3 weeks instead for voluntarily leaving without just cause.

Upon appeal, it was held that the court of referees had been misled by an erroneous head-note to CUB 620; this decision which restated the guiding principle in CUB 530 dealing with pregnant women who after having voluntarily left, restricted their availability to part-time work, contained no reference to health reasons. It was held in the present case that the claimant had taken the initiative in her separation and there was no indication that the employer had asked or even suggested that she resign, the embarrassment of meeting the public being a matter for the employer and not the claimant to decide. It was held that for this reason and in view of the claimant's advanced state of pregnancy, she had failed to rebut the presumption she was not available for work.

JURISPRUDENCE: CUBs 530 and 620 applied.

Applied in CUB 1614.

Appeal of the insurance officer allowed.

January 7, 1955 (Reversed)

CUB 1113

ADJUDICATION PROCEEDINGS (Board of Referees: procedure, unanimous decision—reversed, Commission's responsibility re adjudication procedures, Disqualification: extenuating circumstances, Insurance officer, general).

SUITABLE EMPLOYMENT (Condition of employment: part-time, Disqualification duration, Domestic circumstances, Failure to apply, Personal circumstances, Prospects of return to former work, Voluntarily left previous employment—subjective reasons).

Section 42(1)(a) of the Act (1953)

A married claimant who had been employed by the Department of National Defence, Ottawa, as a clerk from February 1952 to October 31, 1953 when she voluntarily left due to pregnancy, her baby being born on February 23, 1954, filed renewal application for benefit on April 12, 1954. On June 17 she was offered temporary employment of a few months'

duration as a clerk with the Department of Finance at the prevailing rate; the hours, however, were from 4:30 p.m. to 9:30 p.m., five days a week. The claimant refused to apply on the grounds that she wanted full-time regular day work in a permanent job.

The claimant was disqualified for three weeks for having refused without good cause to apply. The court of referees unanimously removed the disqualification on the grounds that other claimants had been disqualified for insisting on such part-time work and refusing full-time employment.

Upon appeal, it was held that the claimant had refused chiefly for personal reasons which cannot be accepted as good cause inasmuch as a married woman must adjust her domestic circumstances to the exigencies of the labour market and be ready to take work on the same conditions as single women, unless there are special circumstances, such as being the bread-winner, which is not the present case. The prospects of the claimant resuming her previous employment were remote in view of the claimant's admission that "this would take a few months' time". The employment was suitable as being in her usual occupation and at the prevailing rate. Finally, it was held that the reduced period of disqualification was valid on account of the part-time nature of the employment and not because it involved unusual working hours. Finally, the Umpire pointed out that the court of referees might have taken a different view of the circumstances if the insurance officer had given some guidance as to the relevant principles of jurisprudence which could be found in CUBs 271, 349, 418, 437, 459, 520 and 619.

JURISPRUDENCE: CUBs 271*, 349*, 418*, 437, 459, 520 and 619 applied.

Applied in CUB 1576.

Appeal of the insurance officer allowed.

January 25, 1955 (Varied)

CUB 1121

ADJUDICATION PROCEEDINGS (Disqualification—extenuating circumstances, Interpretation).

LABOUR DISPUTE (Attributable to labour dispute, Directly interested, Loss of employment, Termination of disqualification, Union membership).

Sections 2(1)(d) and 41 of the Act (1953)

The claimant whose usual occupation was that of a grocery sales clerk, had accepted, while on continuing claim since February 9, 1954, intermittent employment as a cake wrapper and bakery helper in the course of which she had worked odd days as required, including July 1, 2, 5 and 7. On July 8, she lost her employment by reason of a stoppage of all work at the bakery as a result of strike action taken at the employer's premises in another city and the employer then locking out the plant where the claimant was employed. The strike action and lock-out were in connection with a dispute between the employer and the union concerning a reduction of working hours and other fringe benefits which had arisen in the course of negotiations for a new collective agreement to replace that which had expired on May 31, 1954 and which covered helpers and cake wrappers.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

The claimant was disqualified under Section 41 of the Act even though she was not a member of the union and had no intention to return to bakery work but was seeking employment in a local restaurant due to open on August 13. The employer informed the local office that the claimant had been employed on a daily basis and would not have been working after July 24, 1954 at the very latest. The court of referees, while in disagreement with the application of the Act in regard to casual employees, unanimously felt compelled to maintain the disqualification. The insurance officer reported that the claimant had worked from August 12 to August 19 as a waitress in a local cafe and on September 23 had commenced steady employment as a waitress in a local hotel.

Upon appeal, it was held that the stoppage of work was due to a labour dispute and that the claimant, but for the stoppage of work, would have continued to be in employment at least until July 24; furthermore she was employed in a classification covered by the bargaining agreement in dispute, thus making her directly interested therein. It was also held that the disqualification should be terminated as of July 24, the date fixed by the employer for the termination of her contract of service or from the date the stoppage ceased, whichever was the earlier. The strict interpretation given to Section 41(1) of the Act in CUB 152 was reconciled with the general aims of social legislation to acknowledge the principle that a disqualification should end on the date that "the stoppage of work due to the labour dispute ceases to be in any way the effective cause of the claimant's unemployment."

JURISPRUDENCE: CUB 152* distinguished.

CUBs 1131 and 1521A followed.

Appeal of the claimant dismissed except as regards period of disqualification.

March 8, 1955 (Reversed)

CUB 1127

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision finding of fact—reversed, Evidence—medical certificate, Interpretation).

CAPABLE OF WORK (Married Women's Regulation, Proof, Separation from employment in this connection).

CLAIMS MATTERS (Married Women's Regulation).

Section 5A of the Benefit Regulation (1951)

The claimant who had been working as an advertising saleswoman for a newspaper since May 19th, 1952, remarried on December 26th, 1953 and separated from her employment on July 9th, 1954 because the job was "too big and demanding for a married woman". The employer reported that the claimant's efficiency had slackened after her second marriage; following discussion it had been agreed that she would carry on until such time as the company could find a replacement.

The claimant was disqualified as failing to meet any of the conditions stipulated in Benefit Regulation 5A. She subsequently submitted a medical certificate to the effect that she had been ill from January to March 1954, and had been ordered by her doctor to stop working. The claimant ap-

*Printed in Selected Decisions (ed. 1950) and not digested to date.

pealed to the court of referees, stating that she had two children by her previous marriage and the job had required her to stay after 5:00 p.m. two or three evenings a week. The court of referees found the work to be too onerous, in view of the medical certificate, and under the circumstances, that the separation was solely and directly connected with her employment. As to her availability, which had been questioned by the insurance officer, the court also found that the claimant was capable and available for work.

Upon appeal, it was held that the only possible grounds for exception to the Regulation was that the claimant's separation was in consequence of leaving voluntarily because she had had just cause for reasons solely and directly connected with her employment. The claimant would have had to show that she had to put up with more inconvenience than that ordinarily experienced by other women in the same line of work whereas the reason she advanced was entirely of a personal nature arising from her new responsibilities as a married woman. If the claimant had left for health reasons, she would have had to show that her physical condition was so adversely affected that she was not able to continue her work; furthermore that she met the principle stated in CUB 779, namely, "the cause of the incapacity, indisposition or aggravation must, in its source and in its effects, be exclusively and objectively connected with the nature of the work; in other words, the incapacity, indisposition or aggravation must have taken place solely because and in the course of the work". The medical certificate simply showed that the claimant had suffered early in 1954 from pneumonia followed by a right basal pleurisy and that she had had a similar occurrence during the previous winter.

JURISPRUDENCE: CUB 779q. applied.

Referred to in CUB 1408.

Appeal of the insurance officer allowed.

March 8, 1955 (Varied)

CUB 1129

ADJUDICATION PROCEEDINGS (Board of Referees: procedure, unanimous—varied, Disqualification—revision on new facts, Insurance officer, Interpretation, Jurisdiction of adjudicating authority re aspect raised by adjudication, Rehearing—new facts needed).

AVAILABILITY (Capable of work, Disqualification—generally, Married women, Pregnancy of claimant, Presumption of non-availability, Prospects of employment, Restricted as to duration, Retired from regular employment, Voluntary leaving—ignored by insurance officer).

UNEMPLOYED (Availability despite employment, Contract of service, Leave of absence—other, Voluntarily left previous).

Section 29(1)(a) and (b) of the Act (1953)

The claimant who had worked as a clerk-typist from August 1947 to May 29th, 1954, had voluntarily left because of the employer's rule against employing women more than 5½ months pregnant. The claimant expected to be confined on September 15th, 1954 and the employer stated that the claimant was on leave of absence.

The claimant was disqualified as not unemployed by reason of being on leave of absence. The court of referees unanimously removed this

disqualification and furthermore, regarding availability which it had been asked by the insurance officer to examine, found the claimant available.

Upon appeal, it was held that inasmuch as the leave was for an extended period, was without pay and the claimant, while under no obligation to perform any services for the employer, was free to seek other employment without jeopardizing her status, the employer-employee relationship was held in accordance with CUB 888, to have become dormant during such leave and the claimant, to have been unemployed for the period of such leave.

It was held further that the insurance officer had no right, in the absence of new facts, to revive the question of the claimant's availability for work. "Otherwise, it would mean that the adjudicating authorities could, at any time during the life of a claim and without new facts, use this avenue as a means of remedying the errors, omissions, oversights or shortcomings relative to the merits of their adjudication with the result that a claimant would always be kept in suspense as to his past entitlement to benefit". However, the claimant's gradually decreasing availability could rightly have been referred to the court of referees on the facts as they stood on the date of the insurance officer's submission; as stated in CUB 734, it is very much to be doubted "whether any employer would have hired her knowing that she would have been available only for a short period of time during which it is altogether likely that her capability for work would have been affected", the claimant being accordingly disqualified from July 23, 1954.

JURISPRUDENCE: CUBs 888 and 734q. applied.

Applied in CUBs 1140 and 1675.

Appeal of the insurance officer allowed regarding later availability.

March 21, 1955 (Affirmed)

CUB 1136

ADJUDICATION PROCEEDINGS (Evidence: burden of proof on administration, documentary, Interpretation).

LABOUR DISPUTE (Existence of L.D., Insistence and resistance of parties, Picketing, Proof, Stoppage of work).

Section 41(1) of the Act (1953)

The claimant had worked as a pumphouse operator for a municipal water commission from December 8th, 1952, until October 19th, 1954 when he lost his employment under the following circumstances. A local of the National Union of Public Service Employees which had been recently formed among the employees of that municipality, was negotiating for recognition by the town council, which the council refused to grant. The regional representative of the union, on October 18th, 1954, issued a strike ultimatum failing recognition by October 20th. The claimant was asked sometime between 8:00 p.m. and 9:30 p.m. of October 19th, by the manager of the water commission, whether or not he was a member of the union and, upon replying affirmatively, was sent home. The union which had intended to strike at midnight, struck at 9:00 p.m. upon learning that the commission had planned to station two non-union workers in the main pumphouse on a round-the-clock basis. Some employees of the municipal Water Works and Public Works departments were members of the local

and some 80 members of another local and another union stood in groups on the roadway in front of the pumphouse. Later that evening the manager escorted by the police entered the pumphouse through the picket line with one non-union worker.

The claimant was disqualified under Section 41(1) of the Act. The court of referees unanimously allowed the appeal on the grounds that the claimant had been discharged prior to any strike action and picketing.

Upon appeal, it was held there was ample evidence that a labour dispute existed, as shown by the employees' insistence and the employer's resistance. It was also held quite probable that a stoppage of work had resulted at one time or another but as the submissions failed to disclose "what operations were normally carried on at the premises at which the claimant was employed, and in what way, and to what extent and at what moment those operations were interrupted, curtailed or suspended, I am unable to honestly say that there was a stoppage of work within the meaning of the Act." It was pointed out that while newspaper articles often serve a useful and practical purpose, "the facts and statements reported therein are not acceptable as evidence unless they are completely verified."

JURISPRUDENCE: Followed in CUBs 1446, 1447 and 1448 and applied in CUB 1682.

Appeal of the insurance officer dismissed.

April 12, 1955 (Affirmed)

CUB 1138

ADJUDICATION PROCEEDINGS (Evidence: burden of proof on the claimant, employer information, presumption, statements before and after disqualification, weight of evidence).

AVAILABILITY (Circumstances deliberately created, Efforts to find work, Prospects of employment, Students: not directed and presumption rebutted, course's compatibility in relation to usual working hours, intention re work).

VOLUNTARY LEAVING (Availability—joint disqualification, Change in occupation as cause, Just cause not shown, Retired from former employment).

Sections 29(1)(b) and 43(1) of the Act (Pre-1953)

A 31 year old single claimant who had worked as a junior engineer for an auto manufacturer at \$350.00 a month from August 24th, 1953 to September 15th, 1954, voluntarily left to attend a course at the provincial College of Education.

The claimant was disqualified for voluntarily leaving and also as not available for work. The claimant in his appeal stated that he was not content with his job and had been interviewed at a Mechanical Institute with a view to employment as a member of the teaching staff; he had believed confirmation was more or less automatic and had resigned his job only to find that the provincial Department of Education would not give its approval. The court of referees, after hearing the claimant, unanimously maintained the disqualification on the grounds that the claimant had actually left his employment to attend the college, had not made any real efforts to find employment and was still attending college.

Upon appeal, it was held on the basis of the claimant's own admission, in the light of all the circumstances that he had voluntarily left without just cause. "As to the question of the claimant's availability for work, it

must be examined in the light of his intention and mental attitude towards accepting employment while attending the course and of his prospects of employment in respect to the new set of circumstances which he had deliberately created". The claimant's first statement that he had left as he felt teaching provided greater opportunities as well as better security was confirmed by the employer and is consequently more reliable than the vague, indefinite and unsubstantiated statements which he subsequently made, and can be taken as a relative indication that his primary concern while unemployed was not so much obtaining other employment as attending the course. While this is mitigated by subsequent statements, the fact was, nevertheless, that he took no definite steps to secure employment and moreover his continued day-time attendance prevented him from interviewing prospective employers during the customary business hours, thus failing to rebut satisfactorily the presumption that his primary concern was attending the course. In addition, and irrespective of the claimant's intention, the objective circumstances under which he tried to re-enter the labour field were definitely restrictive; inasmuch as of his own volition, he elected to attend the course during normal working hours, he deliberately created a set of circumstances in which his chances of securing employment through his own efforts were so minimized that they carried no weight.

JURISPRUDENCE: Applied in CUBs 1638q. and 1650, followed in CUBs 1492 and 1541 and distinguished in CUBs 1154q., 1161q. and 1613.

Appeal of the claimant dismissed.

April 12, 1955 (Varied)

CUB 1141

ADJUDICATION PROCEEDINGS (Board of Referees unanimous—credibility, varied, Disqualification—wording, Evidence, Benefit of doubt, medical testimony, presumption, statement after board of referees).

AVAILABILITY (Capable of work, Efforts to find work, Intention of the claimant, Married women, Pregnancy, Presumption, Proof, Prospects of employment, Restricted generally and as to occupation, Voluntarily left her previous employment—disqualification only as not available).

Section 29(1)(b) of the Act (1953)

The claimant who had been employed as physicist by a government agency from November 16th, 1953 to September 10th, 1954 had voluntarily left because of pregnancy, her baby being born two days later. She stated that she expected to return to her former employment on November 1st.

The claimant was disqualified from October 12th in the following terms: "You have not proved that you are available for work as required by Section 29(1)(b) of the Act owing to your condition". The claimant appealed, stating she had been refused leave of absence and was advised to resign instead, although she was promised re-employment and had a good chance of being re-engaged after confinement; she also stated that she had applied on October 4th and had been told that her re-appointment was receiving attention; the claimant considered herself physically fit for professional work.

The court of referees unanimously maintained the disqualification on the grounds that the claimant could have established her fitness by medical evidence but was apparently restricting her availability to one

particular job. Leave to appeal was granted the claimant who outlined her extensive and very specialized qualifications and pointed out that she had confined her search for employment because her re-appointment had been under consideration since the beginning of October, that employer was probably the only organization in that city where she might find suitable employment. She further stated she had been re-engaged on November 29th, 1954.

Upon appeal, it was held that, in the absence of definite evidence to rebut the presumption that she had voluntarily left because of pregnancy, she was not available for six weeks after confinement, namely, October 23rd inclusive and in the absence of any other special circumstances such as being the bread-winner for the family etc., she was rightly disqualified up to that date. Furthermore, under ordinary circumstances and in view of CUBs 7, 708 and 896, she might have been disqualified after that date as having restricted her availability to one employer without having any absolute assurance of being rehired in the near future. The claimant however was given the benefit of doubt regarding her availability as from October 24th, 1954 because of the wording of the notice of disqualification which left much to be desired and did not convey the full grounds for the disqualification and because she was a new-comer to Canada, these factors being taken into account along with the explanation which she gave at the hearing as to her true intention and attitude towards accepting employment with another employer.

JURISPRUDENCE: CUBs 7*, 708 and 896 distinguished.

Followed in CUB 1505 re first six weeks after confinement.

Appeal of the claimant allowed as from six weeks after confinement.

April 13, 1955 (Reversed)

CUB 1142

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—reversed).

LABOUR DISPUTE (Attributable to labour dispute, Conditions of employment, Directly interested, Extension of labour dispute, Grade or class, Merits irrelevant, Participating, Picketing, Premises, Stoppage of work, Union membership).

Sections 2(1)(d) and 41 of the Act (1953)

The claimant, one of approximately 70, had been employed as an electric operator in the powerhouse of an auto manufacturer from 1938 to October 15, 1954 when he became separated under the following circumstances. A collective agreement covering all hourly-rated plant workers, including those in the powerhouse, was due to expire on February 19, 1954 or on such later date as was specified under the agreement. Following the breakdown in negotiations and unsuccessful conciliation, the union called a strike and set up picket lines at the company's plant at 10:00 p.m. on Sunday, October 10, 1954, resulting in a complete cessation of operations except in the office and powerhouse departments. A clause of the collective agreement provided that in the event of a dispute the union agreed it would at all times during the currency of the agreement ensure free and unobstructed entrance and exit to all employees of the powerhouse.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

As a result, the claimant and the other hourly-rated powerhouse employees continued to report and to perform their duties until the company closed the powerhouse at 5:00 p.m. on October 15, 1954. The company gave as the reason the difficulties encountered by supervisors at the powerhouse picket line which the union admitted but alleged was only temporary and attributable to the necessity of securing identification.

The claimants were disqualified for the duration of the stoppage under Section 41(1) of the Act. The court of referees unanimously removed the disqualification on the grounds the claimant had not lost his employment by reason of the stoppage of work due to a labour dispute at that plant and, furthermore, the claimant was not directly interested in the labour dispute.

Upon appeal, it was held that the complete cessation of operations prior to October 15 was a stoppage of work and due to a labour dispute within the meaning of Section 2(1) (b) of the Act; secondly, the hourly-rated powerhouse employees were, from the very beginning of that dispute, directly interested regardless of lack of union membership or active participation, inasmuch as their wages and conditions of employment were regulated by the bargaining agreement under review and stood to be directly affected by the outcome of the dispute; thirdly, the willingness to work of the powerhouse employees and the alleged infringement of the collective agreement by the employer closing the powerhouse was of no significance as being essentially related to the merits. It was held that the shut-down of the powerhouse was prompted by reason solely and directly connected with the existing labour dispute and under the circumstances, and this was the most important factor, could only be in furtherance of the employer's interest, the necessary result being the extension of the stoppage of work to the powerhouse, whether a separate workshop or not. The claimant being directly interested, it was unnecessary to determine whether he and his fellow-claimants constituted a separate grade or class of workers.

JURISPRUDENCE: Distinguished in CUB 1532 regarding extension applied in CUB 1521A and followed in CUBs 1533 and 1623.

Appeal of the insurance officer allowed.

April 14, 1955 (Affirmed)

CUB 1146
(French)

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—credibility, Evidence: burden on claimant, conclusive, enforcement officer finding, statements before disqualification).

CAPABLE OF WORK (Separation from employment in this connection).

CLAIMS MATTERS (Punitive disqualification).

UNEMPLOYED (Availability, Contract of service, Family enterprise, Usual remuneration).

Sections 29(1)(a) and 46(2) of the Act (1953)

The claimant had worked as a printing shop foreman from January 15, 1951 to April 29, 1954. He filed an initial claim on June 16, 1954 stating he had been sick and was now capable of work outdoors, as per medical certificate in support, upon which he was allowed benefit. Upon investi-

gation by an enforcement officer, the claimant declared on September 30th, having left his employment on doctor's order because of a heart condition and that since, he had worked in a pharmacy belonging to his doctor brother but without contract of service or salary, living above the pharmacy with his family. The claimant's brother confirmed the claimant's statement, adding that he had cared for his brother's family professionally without charge and that his brother did not replace anyone and would not be replaced if he left.

The claimant was disqualified as not unemployed and for a period of 21 days, for reason of false statements under Section 46(2). The court of referees unanimously maintained the two disqualifications.

Upon appeal, it was held that in view of the clear and precise instructions given to all claimants by the local office with respect to reporting, the claimant knew or should have known that he was obliged to inform the local office of the nature or scope of his daily activities. It was held that failing that the Umpire must abide by the principle established in CUBs 758 and 793: "... The fact of being available for work is not conclusive evidence of unemployment . . . the apparent lack of remuneration in the case of a claimant who follows an occupation which is ordinarily remunerated does not necessarily lead to the conclusion that he is unemployed . . ., even less when he pursues this occupation during the ordinary working hours".

JURISPRUDENCE: CUBs 758 and 793 followed.

Applied in CUB 1324.

Appeal of the claimant dismissed.

May 10, 1955 (Affirmed)

CUB 1147
(French)

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision—labour dispute, Evidence; conclusive, employer information—responsibility, irrelevant to decision Interpretation, Jurisdiction of adjudicating authority re aspect raised by adjudication and re policy, Umpire—decision).

LABOUR DISPUTE (Attributable to labour dispute, Conditions of employment, Directly interested, Existence of labour dispute, Insistence and resistance of parties, Merits irrelevant, Separation prior to stoppage, Stoppage of work, Termination of disqualification).

Section 41(1) of the Act (1953)

The claimant, one of 19, had been working as a knitter for a hosiery factory when he lost his employment on September 20th, 1954 under the following circumstances. The bargaining agreement in force between the union and the employer was due to expire on April 1st, 1956 only. However, on September 15, 1954 the employer called a meeting of his employees and having outlined his financial difficulties, suggested a reduction in salary of approximately 19%. The matter was negotiated during the next three days. The union agreed to a reduction of 8% which was rejected by the employer who decided to gradually close his plant and release the entire 46 employees. The employees were released on the following basis: 9 on September 20th, 6 on the 21st, 1 each on the 22nd, 23rd and 27th, 7 on the 29th and 11 each on October 4th and 12th. During this time a

certain number were recalled as required and then released once more. Further negotiations led to eventual agreement on a reduction of 12½% in salary and the resumption of operations on October 20th.

The claimant was disqualified under Section 41(1) of the Act and the court of referees maintained the disqualification by majority vote. Counsel for the union contended the reduction in staff was a normal suspension of operations during a recession period.

Upon appeal, it was held that the existence of a labour dispute and of a stoppage of work had been established beyond any doubt. The consistent and lasting difference of opinions on the rate of reduction was directly connected with the working conditions. The existence of a stoppage of work from September 20th was not questioned by the claimant, the proof showing in any event that the employer had enough orders etc., for the nine employees laid off the first day and consequently for all those who lost their employment afterwards. It was held the interruption in usual operations was appreciable enough as early as September 20th to constitute a stoppage under the Act. It was considered obvious that the employees would not have lost their employment had there been no difference of opinion regarding the rate of salary reduction, and held that they were unable to prove that they were not directly interested since their working conditions were directly involved.

Regarding several points raised by the counsel for the claimant, it was held that the merits of the facts were not within the Umpire's jurisdiction and, furthermore, it was not his duty to pass judgment on whether there was a lock-out or not, but simply to determine whether the loss of employment constituted a stoppage of work and whether, if in the affirmative, the stoppage was due to a labour dispute, "the mere fact that the initiative comes from the employer (not rendering) the matter beyond the concept of a labour dispute if his action is taken in consequence of unwillingness on the part of the employees to agree to his demands . . ." (CUB 570). Furthermore, any wrongful use in future of the present decision was remediable by reference to the proper authorities. Finally, the decisions of lower jurisdictions were not appropriate citations in support of any point of law before the Umpire.

JURISPRUDENCE: CUB 570 referred to.

Followed in CUBs 1521A and 1542 re direct interest.

Appeal of the claimant's union dismissed.

May 10, 1955 (Varied)

CUB 1148

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—reversed, Evidence: burden on administration and on claimant, conclusive, presumption (*prima facie*), weight of evidence, Interpretation).

LABOUR DISPUTE (Attributable to L.D., Conditions of employment, Directly interested, Existence of L.D., Grade or class, Loss of employment, Proof, Termination—*bona fide* employed elsewhere).

Section 41 of the Act (1953)

The claimant had worked as a labourer at \$1.00 an hour at a cannery factory, from October 6th to October 27th, 1954, when he lost his employment by reason of a strike that day over the renewal of a bargaining agreement covering, among others, the claimant's occupation.

The claimant was disqualified under Section 41 of the Act; he appealed to the court of referees on the grounds he had worked since for a television company erecting antennae from November 18th to November 24th, and had been only a casual worker at the plant, having worked only 10 days in September and 15 days in October. The court unanimously removed the disqualification on the grounds that the claimant had been only a casual employee. The insurance officer appealed on the grounds that the claimant's wages etc., stood to be affected by the outcome of the dispute (CUBs 423 and 428) and that he could not be relieved of the disqualification simply because his employment was of casual nature (CUB 152). On the basis of further information, it appeared that the claimant had worked for the cannery for a total of 27 days in 1954, and from January 12th to February 22nd, 1955 as a warehouse labourer; furthermore, his employment with the television company had been on a day to day basis during a rush of orders.

Upon appeal, it was held that the existence of a stoppage of work, while not established in conclusive manner by the insurance officer, being merely based on general data rather than on specific statements and facts, was established *prima facie* in the absence of any evidence or contention to the contrary. A complete cessation occurred as from October 27th, 1954 until a substantial resumption on January 10th, 1955. It was further held there was irrefutable evidence of a labour dispute within the meaning of the Act and it was obvious the stoppage bore a direct relationship to the disagreement between the parties and was in furtherance of the interest of one of these.

In specific and exceptional circumstances such as set out in CUB 531, an insured person may be held to have retained his normal grade or class; however, in the present case the claimant had sustained an injury in November 1953 which made him by his own admission incapable of pursuing his former occupation of construction labourer; the retention of that grade or class would depend also on the circumstances of his particular case, such as the length of time he has not been, and is not likely to be, employed in his normal occupation, and the nature of his provisional employment. The claimant had been on full compensation until May 1st and then on half compensation until August. He had been incapable of pursuing his former occupation for a considerable time and this situation seemed likely to endure, as borne out by the claimant's resumption of employment as an ordinary labourer at the plant after the stoppage ended. The claimant's employment in the factory was accordingly held to be not casual but regular in that he was under regular contract of service and had not been hired merely to perform a specific job of undetermined duration. Accordingly, he was directly interested in the wage and conditions of his provisional employment to a larger extent than he was in those of his ordinary occupation.

As regards the claimant's employment elsewhere after the stoppage commenced, it was held that the claimant's employment in the erection of television antennae, was that of an ordinary labourer and, to be consistent, in the occupation that he usually followed at that time. It was finally held that, the employment, while temporary, was "*bona fide*" in the absence of any evidence that he was not employed under a genuine contract of service or that he had only undertaken the employment to

evade further disqualification. The disqualification was reaffirmed accordingly from the date of the stoppage until the date of the claimant's employment in the installation of television antennae, November 18th.

JURISPRUDENCE: CUB 531 distinguished.

Applied in CUBs 1149 and 1589.

Appeal of the insurance officer allowed in part.

May 13, 1955 (Reversed)

CUB 1150

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—finding of fact—reversed, Evidence: burden on administration and on claimant, employer information and responsibility, statement after disqualification).

CAPABLE OF WORK (Sickness benefit, Workmen's compensation).

VOLUNTARY LEAVING (Capability for work—reported cause, Grievances—raised with employer and union, Just cause shown, Proof—onus on claimant, Tantamount to voluntary leaving, Working Conditions).

Section 43(1) of the Act (1953)

The claimant had been employed as a bull-cook for a logging company of British Columbia from August 23rd to September 22nd, 1954, when he voluntarily left over the long hours of work, 5 a.m. until sometimes 10 p.m., 7 days a week. The employer and claimant disagreed as to whether the latter had complained, the employer stating the claimant had become unable to perform his work by reason of a back injury. The claimant admitted to having suffered a fall and required temporary assistance but contended the employer had taken advantage of this to pay him off with a view he report to the Workmen's Compensation Board in Vancouver. Upon his arrival there, the claimant had decided there was no grounds to claim compensation but had requested his union to take up the question of over-time pay owed him by the employer.

The insurance officer disqualified the claimant under Section 43(1) of the Act. The court of referees unanimously maintained the disqualification on the grounds that the claimant had made no effort to invoke the aid of his union to have his grievances remedied before leaving. On further representations, the court of referees reheard the case upon it being referred back by the Regional Claim Officer but still maintained the disqualification. The claimant in his appeal to the Umpire stated there was nothing in the Commission's instructions to workers to the effect a man was compelled to seek redress through his union for unsatisfactory working conditions (those of the claimant were not covered by the bargaining agreement) and, furthermore, there was no union Grievance Committee functioning at the camp.

Upon appeal, it was held that the onus which lay on the insurance officer to prove that the claimant had taken the direct initiative in relinquishing his employment or that he had so acted as to influence his employer to discharge him, had been discharged in the present case, thus transferring the burden to the claimant to prove that he had just cause. It was further held there was definite and substantiated evidence that the claimant's working conditions were practically unbearable. Furthermore, as the claimant had brought his grievances to the attention of two

officials of the company and as a consequence had been told he could leave if he was not satisfied, there was nothing more he could possibly do under the circumstances to have these remedied within a reasonable period of time. Finally, it was held that the injury sustained by the claimant, if it had anything whatsoever to do with the essential issues in the present case, was merely incidental.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant's union allowed.

May 20, 1955 (Affirmed)

CUB 1151

LABOUR DISPUTE (Attributable to labour dispute, Conditions of employment, Direct interest, Existence of labour dispute, Grade of class, Incidents characteristic of labour dispute, Insistence and resistance of parties, Loss of employment, Picketing, Proof, Relief, shortage of work, Termination of disqualification—other, Union membership, Violence, Voluntary leaving).

Section 41(1) of the Act (1953)

The claimant who had been employed on probation as an assembler by the International Resistance Company Limited, manufacturers of television and radio parts, Toronto, Ontario, since October 4, 1954 lost her employment on November 1, 1954 by reason of a strike at the plant where she was employed. The strike was called by Local 514 of the United Electrical, Radio and Machine Workers of America of which the claimant was not a member, upon the employer's refusal to implement the majority recommendation of a conciliation board for a wage increase of 9¢ an hour in respect of all the employees covered by the collective agreement which had been in force between the employer and the union. The plant was picketed from 12:00 noon on November 1 and all the production employees, including assemblers, lost their employment on that day.

The claimant was disqualified for the duration of the stoppage pursuant to Section 41(1) of the Act. The claimant appealed on the grounds that she was a probationary employee at the plant and that it was unfair of the employer to expect her to come in to work with police escort, a newspaper clipping in which violence on the picket line was reported being submitted. The employer stated that the claimant walked off the job on November 1 and had failed to respond, unlike one quarter of approximately 100 so approached, to a letter from the company inviting the claimant to return to work on November 26; as a result her insurance book was then mailed to her. The court of referees unanimously affirmed the disqualification, finding that the claimant belonged to a grade or class of workers directly interested in the dispute.

Upon appeal, it was held that the three conditions required for a disqualification under Section 41 were met. Firstly, there was a labour dispute as defined in Section 2(1) (d) of the Act at the premises in question, in that there was a contention between the employer and his employees relating to wages, the two parties were unable to accord, the matter was referred to a conciliation board, the company refused to implement its recommendation and the employees went on strike and picketed the plant, all incidents held in the past to be characteristic of a labour dispute. Secondly, such dispute was the direct cause of an appreciable stoppage of work; the existence of the stoppage of work was *prima facie* established, in that on

the day the strike began the employer had work on hand and the concerted action of all the production workers, in failing to resume their employment "although the numbers affected by the stoppage of work, as a general rule, cannot be taken as the sole and absolute criterion of whether the stoppage is appreciable", created, to say the least, an appreciable interruption of the work. Finally, but for the strike, no appreciable interruption of operations would have occurred on that day and the claimant therefore lost his employment by reason of this stoppage.

As regards the claim for relief as a probationary employee, it was not seen how, by being so employed, the claimant's status as a worker under contract of service could be affected to the extent of making it "substantially different" from that of the other workers ordinarily employed at the plant and to this extent the claimant must be held to have been "employed" within the meaning of section 41(1) of the Act. Furthermore "there is no suggestion that the alleged fact that she was a probationary employee had anything whatsoever to do with the execution of her work as an assembler, which, if verified, might justify the contention that she belonged to a distinct classification of assemblers, nor does it appear that such fact had the effect of excepting her from the application of the collective agreement. She, therefore, belonged to the grade of the assemblers and to the class of the employees covered by the agreement, and inasmuch as, irrespective of non-membership in the union, the conditions of employment of these grade and class stood to be directly affected for better or for worse by the outcome of the dispute, she was directly interested therein."

Having found the claimant directly interested, it was not considered necessary to examine whether she was participating in the dispute by her refusal to cross the picket line.

As regards the termination of the claimant's disqualification on the grounds of the employer's notice to resume work and his notice of separation upon her refusal to do so, this was just another incident in the labour dispute, in accord with the principle stated in CUB 570.

JURISPRUDENCE: CUB 570q. followed.

Followed in CUB 1542.

Appeal of the claimant dismissed.

May 20, 1955 (Rehearing)

CUB 1152

August 31, 1955 (Affirmed)

CUB 1152A

ADJUDICATION PROCEEDINGS (Board of Referees: rehearing on Umpire's referral—new facts submitted).

AVAILABILITY (Intention of claimant, Married women, Pregnancy, Prospects of employment, Suitable employment refused later—general, Voluntarily left—ignored by insurance officer).

SUITABLE EMPLOYMENT (Availability—disqualification then only for refusal, Conditions—transportation facilities and wages, Duration of unemployment—long, Good cause not shown, Prevailing conditions, Reasonable interval, Voluntarily left previously—subjective reasons).

Sections 29(1)(b), 42 and 66 of the Act (1953)

The claimant who resided in a small town in the Eastern Townships and had worked in a nearby village as a bank teller at \$28.00 a week from

January 9th, 1952, had left on February 28th, 1954 because of her pregnant condition, the baby being born on July 23rd, 1954. Four days before birth, the claimant had registered for work at the local office as a teller stating she would not be able to travel very far for lack of transportation.

The claimant was disqualified as not available for work, but upon specifying the person who would care for the infant in the event of employment, the disqualification was removed as of September 2nd, six weeks after confinement. On December 7th, 1954 the claimant then refused an offer of permanent employment as a telephone clerk at \$25.00 a week in a hosiery factory in Sherbrooke, 36 miles away; her reason for not applying was that she would have to use her entire earnings for bus fare and a baby sitter. The claimant stated she would readily accept work in her own town or one nearby at a wage whereby she could afford to pay both bus fares and a baby sitter.

The claimant was disqualified under Section 42(1)(a) for a period of six weeks for her refusal. The court of referees unanimously maintained the disqualification in the absence of any special circumstances that would excuse the claimant from being ready, as per CUB 437, to accept employment on the same conditions as single women. The claimant applied for leave to appeal giving as a new reason the fact that she was not bilingual; the placement officer reported that the employer did not consider this essential.

Upon appeal, a rehearing was directed on the grounds the claimant's last reason was a new fact and in accordance with Section 66, the court of referees, and not the Chairman only, should have been given the opportunity of examining it; furthermore, it should have been submitted to the employer for his opinion immediately it came to light.

The court of referees unanimously maintained its previous decision.

Upon appeal, it was held that the only two important circumstances were that the claimant was a married woman with domestic responsibilities and that she had been previously employed in her own area; the first of these had been properly dealt with by the court of referees (CUB 437) and the second had lost any significance after the very first weeks of unemployment. It was held accordingly that the time elapsed since her unemployment was a reasonable interval within the meaning of Section 42(3). It was noted that the salary was at the prevailing rate and in the absence of new evidence to the contrary "it must be assumed that such rate was not lower than that 'recognized by good employer' in Sherbrooke." It was held that the necessity for the claimant's use of her entire earnings for bus fare and baby sitters cannot properly be advanced as a reason for the conditions of employment being less favourable because this was directly and exclusively due to her personal circumstances and responsibilities as a wife and mother. Finally, it was held, that the claimant's new reason, unilingualism, had been dissipated by the prospective employer's statement.

JURISPRUDENCE: CUB 437 followed.

Applied in CUB 1468
and referred to in CUB 1576.

Appeal of the claimant dismissed.

June 7, 1955 (Varied)

CUB 1154

ADJUDICATION PROCEEDINGS (Board of Referees: rehearing at the insurance officer's request, unanimous decision—finding of fact—varied, Evidence: burden of proof on claimant, employment officer opinion, statement after board of referees, Jurisdiction of adjudicating authority re aspect raised by adjudication).

AVAILABILITY (Efforts to find work, Restricted as to hours, Student—course's compatibility in relation to usual working hours and intention re work, Voluntarily left—ignored by insurance officer).

VOLUNTARY LEAVING (Availability—disqualification only, Change in occupation as cause, Just cause not shown, Retired from former employment).

Sections 29(1)(b) and 43(1) of the Act (1953)

A 24-year-old single claimant who had been employed as cost accountant from October 1953 to September 10, 1954, registered for employment as labourer, stating he had left, as confirmed by the employer, in order to go back to school to further his studies.

The claimant was disqualified as not available for work. In his appeal he stated that he was available for work in the mornings until 1:00 p.m. and again from 6:00 p.m. until midnight. The local office requested information as to the name of the school, hours of attendance and subjects. No reply having been received, the case proceeded to the court of referees which unanimously maintained the disqualification. Subsequently, it came to light that the claimant had replied to the local office immediately upon receipt of the inquiry and then again before the court of referees heard the case. The insurance officer referred it back for rehearing. The employment division of the local office reported that the possibilities of morning work were remote but that employment could be provided in evenings on a permanent shift from 5:00 p.m. to 1:00 a.m. and all day Saturday. The court of referees unanimously removed the disqualification.

Upon appeal, it was held that the essential facts obviously differed from those in CUB 765 relied upon by the insurance officer. In the light of CUB 1138, whereby availability must be examined in the light of the claimant's intention towards accepting employment while attending the course and of his prospects of employment, the Umpire adding that there was no hard and fast rule which could be laid down, it was held that the claimant's hours of attendance made it possible to find work of a kind there was some probability of obtaining, and his registration as a labourer *prima facie* showed he was willing. It was held, however, that in the absence of any definite evidence that the claimant himself endeavoured to secure employment, he could not still be regarded as genuinely interested in work as of the date of the decision of the court of referees, the claimant accordingly being considered not available from November 30, 1954. It was held that while the question of voluntary leaving, was not and could not now rightly be before the Umpire, a disqualification should have been imposed under Section 43(1) of the Act.

JURISPRUDENCE: CUBs 765 and 1138 distinguished.

Distinguished in CUBs 1161 and 1650 and followed in CUBs 1492 and 1541.

Appeal of the insurance officer allowed in part.

June 13, 1955 (Varied)

CUB 1161

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—varied, Evidence—burden on administration, employment officer opinion).

AVAILABILITY (Circumstances deliberately created, Efforts to find work, Prospects of employment, Restricted as to hours and days, Students—not directed and presumed non-availability unrebutted—course's compatibility in relation to usual working hours, (Not) Voluntarily leaving—disqualified only as not available).

Section 29(1)b) of the Act (1953)

The claimant had applied for benefit on July 20th, 1954 in Winnipeg, stating he had been employed as a school teacher in a small town in Manitoba from October 25th, 1953 to June 20th, 1954, when his contract expired; during the latter part of August 1954 he took up residence in Saskatoon. It was reported on December 3rd, that the claimant had commenced classes in the college of education at the University of Saskatchewan on September 22nd, 1954 and had been in attendance from 8:30 a.m. to 12:30 p.m. on Mondays, Wednesdays and Fridays and from 9:30 to 10:30 on Tuesdays, Thursdays and Saturdays.

The claimant was disqualified as not available retroactively to September 22nd. The claimant appealed to the court of referees stating among others that his main occupation was that of research chemist and his secondary occupation was technical sales, that his employment as teacher had been under a letter of authority from the Manitoba Department of Education good only for one year and finally that it was, following verbal approval by an employment officer of the local office, that he had taken the teachers courses to earn a certificate; he later stated that attendance on Tuesdays, Thursdays and Saturdays was optional. The court of referees unanimously maintained the disqualification.

Upon appeal, it was held that the case could be distinguished from both CUBs 1138 and 1154 in that the claimant had not voluntarily left his employment. Furthermore, the claimant was ready to accept any suitable employment other than teaching and his hours of attendance did not prevent him from working afternoons and evenings. The evidence also revealed that he had decided to attend the University after consultation with the local office and with a view to improving his employability and, furthermore, he could have quit the course in the event of an offer of work. It was held accordingly that these circumstances established prima facie the claimant's willingness to accept employment while attending classes and, in the absence of any information regarding the labour market, it was assumed that work of the kind he was desirous of securing existed in the city. He was held therefore to have been available for work on September 22nd and thereafter. It was further held, however, that such period of availability should be limited to three months after which the claimant's inability to secure employment should be regarded as being mainly due to "the new set of circumstances which he had deliberately created" (CUBs 1138 and 1154).

JURISPRUDENCE: CUBs 1138 and 1154 distinguished in part and otherwise applied.

Followed in CUBs 149 and 1541.

Appeal of the claimant allowed regarding first three months.

June 28, 1955 (Reversed)

CUB 1163

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—general—reversed, Interpretation, Jurisdiction of adjudicating authority re legislation).

CLAIMS MATTERS (Married women's regulation—leaving for reasons solely and directly connected with her employment).

VOLUNTARY LEAVING (Capability for work—pregnancy, Retired from former employment).

Benefit Regulation 5A (1951)

The claimant who had been employed since February 22nd, 1954 and married on July 3rd, 1954, was released on November 30th, 1954 because of her employer's policy of having persons in the fifth month of their pregnancy resign. The claimant expected confinement April 1st, 1955.

The claimant was disqualified as failing to meet any of the conditions stipulated in Benefit Regulation 5A. The claimant contended in appeal that she had had to resign effective the date of her marriage, a new contract of service being drawn up and signed upon her return on July 19th from her honeymoon, and accordingly that she had more than the 60 days' work subsequent to her marriage as required by the Regulation. The court of referees unanimously removed the disqualification on the grounds that the claimant's separation was due to reasons solely and directly connected with her employment.

Upon appeal, it was held that the claimant's contention she had separated from her employment on the date of her marriage could not be accepted, CUB 832 having laid down the principle that a change from permanent to temporary status of employment did not constitute a separation for the purpose of the fulfilment of any of the additional conditions. Furthermore, it was held that the employer's rule in question was against retaining pregnant women in his employ and, accordingly, the claimant's separation was not for any of the reasons provided by the Regulation, for example, the employer's rule against retaining married women in his employ. Finally, it was held that while the claimant's contention that she was the family bread-winner, her husband being a student, had considerable merit, it was not acceptable in law as her particular status as a married woman was not specifically provided for in the Regulation and the Umpire had no vested power to override any Regulation.

JURISPRUDENCE: CUB 832 applied.

Followed in CUBs 1194 and 1380.

Appeal of the insurance officer allowed.

June 28, 1955 (Reversed)

CUB 1171

AVAILABILITY (Domestic circumstances, Intention of claimant, Presumption, Prospects of employment, Restricted to part-time, Voluntarily left in the first place—joint disqualification earlier).

Section 29(1)(b) of the Act (1953)

The claimant who had worked as a typist since 1952 voluntarily left her employment on July 10, 1954, as she wanted to work half-days only.

The claimant was disqualified for voluntary leaving and for having failed to prove that she was available for work under Sections 43(1) and

29(1)(b) of the Act respectively. She did not appeal. On January 5, 1955, she renewed her application stating she wanted part-time work only as she had to care for her mother who had been ill. The claimant was informed that the disqualification for non-availability would remain in effect.

In her appeal the claimant stated that prior to her full-time employment, she had worked part-time three years at one place and 3½ years at another, but she now found it impossible to do so because her husband worked night shifts (starting at 3 o'clock p.m.) every alternate week and they had an 11-year-old son. The court of referees unanimously removed the disqualification on the grounds she was available for four hours either in the morning or in the afternoon and also because of the obvious mental qualifications and the personality of the claimant which would enhance her prospects of employment.

Upon appeal, it was held that availability was a question which should be considered in the light of the particular circumstances of each case. When domestic circumstances or matters of a personal nature were advanced, the point to consider is whether the claimant's sphere of employment had been restricted to the point of non-availability. It was held that the claimant's record of part-time employment had little importance in view of her more recent record of two years' full-time employment and, accordingly, that the claimant in the absence of any special circumstances, such as being the breadwinner of the family, etc., was, in accord with CUB-594, not available. Finally, the fact the claimant had not been able over a period of six months to secure part-time employment indicated there were no reasonable opportunities of such work as a typist in the area in which she resided.

JURISPRUDENCE: CUB 594 applied.

Applied in CUB 1477.

Appeal of the insurance officer allowed.

June 29, 1955 (Affirmed)

CUB 1175

AVAILABILITY (Efforts to find work, Prospects of employment, Restricted generally, Union rules).

Section 29(1)(b) of the Act (Pre-1953)

The claimant applied for benefit on January 10th, 1955, stating he had worked for a newspaper printing company in Toronto as a compositor at \$105.00 a week from March 31st, 1954 to December 31st, 1954 when he was laid off for work shortage. The employer stated the claimant was "available as a spare man until such time as steady situations open".

The claimant was disqualified as not available for work. In appeal, he stated that he had worked about three or four days per week but December and January were very slow in that he did not work at all; also he was available for outside employment with the permission of his union. The union advised that it could send the claimant to other jobs but the claimant would lose his seniority if he accepted other employment "on his own". A majority of the court of referees maintained the disqualification.

Upon appeal, it was held that if the claimant had registered for employment in other than his usual occupation and had shown he was absolutely free to accept such employment without jeopardizing his status with his employer and forfeiting his union rights, he might have been considered available for work. It was held that the claimant having failed to do so, there was no valid reason to justify any change in the principle laid down in CUB 960 whereby a claimant was not available when the only employment suitable for him was that to which he was directed by his union.

JURISPRUDENCE: CUB 960 followed.

Applied in CUB 1519.

Appeal of the claimant dismissed.

October 27, 1955 (Reversed)

CUB 1183

ADJUDICATION PROCEEDINGS (Board of Referees—unanimous decision—general—reversed, Evidence: medical testimony, statements before and after disqualification, Interpretation, Jurisdiction of adjudicating authority—aspect raised by adjudication).

AVAILABILITY (Absence from local office area, Capable of work, Efforts to find work, Proof, Prospects of employment, Restricted as to area—duration—travel, Retired from regular employment, Temporary non-availability).

CAPABLE OF WORK (Availability affected as result, Retired from former employment, Sickness benefit, Suitability for employment likely to be offered).

Section 29(1)(b) and (3) of the Act (1953)

A 67-year-old claimant who had been retired on pension after employment by a railway company in Montreal as a millman from 1919 to October 1953 and who had drawn benefit at the Montreal local office from December 16, 1954 until February 26, 1955 and then informed the local office on March 2 he was going to the United States, requested on March 7 the Florida State Employment Office in Miami to forward to the Montreal office a claim for the continuance of his benefit rights, giving as his explanation that his doctor had advised him to go south, and supporting this with a medical certificate showing he had chronic bronchitis.

The claimant was disqualified for an indefinite period from February 28, 1955 on the grounds he had not proved he was available for work. The following day, the Florida Employment Office forwarded to Montreal a summary of their interview with the claimant in which he stated he had been coming to Miami for health reasons every year since 1943 and had never worked nor looked for work while there "because he was ill", furthermore, that he did not know when he would be well enough to seek work and, finally, be expected to remain in Miami only until the end of April. The claimant appealed the disqualification, contending he had become ill while on benefit and therefore should not have been disqualified. The court of referees on April 21, while the claimant was still in Florida, unanimously maintained the disqualification on the grounds that "the sickness of the claimant is so that he is not suitable for work".

Upon appeal, it was held that the primary reason for the claimant's non-availability for work was because he had become incapable of work by reason of illness within the meaning of Section 29(3) of the Act which afforded him relief from disqualification. This finding was based on the

opinion advanced at the hearing before the Umpire by the representative of the Unemployment Insurance Commission, that the evidence on file, to some extent, indicated that the claimant prior to his departure for Florida had become incapacitated for work because of illness, and on the claimant's own testimony which was corroborated by his wife, and also took into account the unanimous finding of the court of referees that the claimant's sickness made him not suitable for work.

JURISPRUDENCE: Followed in CUB 1558.

Appeal of the claimant allowed.

October 28, 1955 (Reversed)

CUB 1184

ADJUDICATION PROCEEDINGS (Jurisdiction of adjudicating authority re aspect raised in adjudication).

AVAILABILITY (Domestic circumstances, Intention of claimant, Prospects of employment, Restricted as to travel, Suitable employment refused—joint disqualification, Voluntarily left—ignored by insurance officer).

SUITABLE EMPLOYMENT (Availability—joint disqualification, Conditions—transportation facilities, Domestic circumstances, Duration of unemployment—long, Good cause not shown, Prevailing conditions, Voluntarily left previously—subjective reasons).

Sections 29(1)(b) and 42(1)(a) of the Act (1953)

The claimant, a 38-year-old married woman stated that she had worked as a secretary-bookkeeper in Vancouver at the salary of \$240.00 a month, from May 1st, 1952 to October 1st, 1954, when she had voluntarily left to change residence with her RCMP husband to a small town (400 pop.) from the town where they resided previously and from which she had daily commuted to her employment. A claim filed, shortly thereafter, was allowed. On March 9th, 1955, the local office 'phoned the claimant to advise her of an offer of employment as a stenographer, at the prevailing rate, with a lumber company situated in a small community, 9 miles from the town in which the claimant's local office was situated; transportation between the local office center and the community in question was supplied, leaving at 7:50 a.m. and arriving back at 4:40 p.m. The claimant's husband, who took the message, advised the local office that the claimant would be unable to accept because of lack of transportation between the town where they resided and the local office center. A written referral was sent to the claimant but no reply was received.

The claimant was disqualified for six weeks for her refusal, without good cause, to apply for a situation in suitable employment. In appeal, the claimant stated she was perfectly willing to accept secretarial work in the logging community in which she was residing but had been unable to secure transportation to and from the local office center which would conform with business hours. The insurance officer suggested that the court might also wish to consider a disqualification for non-availability in view of the claimant's statement that employment opportunities in her community, which was primarily a summer resort, were extremely limited for women. The court of referees unanimously removed the disqualification on the grounds that the employment was unsuitable by reason of transportation difficulty.

Upon appeal, it was pointed out that the general principle laid down by the jurisprudence was to the effect that claimants who voluntarily leave their employment in large centers to move to small communities where there are no reasonable prospects and no convenient transportation to adjacent industrial areas, were not available and this principle, as pointed out in CUB 1103, was all the more applicable in the case of a married woman following her husband as "domestic responsibilities" became an additional factor. It was held that availability "implies being able, willing and ready to accept immediately any offer of suitable employment". This means a married woman could not restrict her employability to an area where no work could be obtained and she must "so adjust her domestic circumstances as to be able to conform to the exigencies of the labour field". Furthermore, claimants living in isolated areas where work is scarce fail to show good cause when they turn down employment nearby because of a lack of transportation facilities. Accordingly, the claimant was disqualified for an indefinite period under Section 29(1) (b) until she proved her availability and for a period of six weeks under Section 42(1) (a), both to take effect from the date the decision was communicated to her.

JURISPRUDENCE: CUB 1103 followed.

Applied in CUB 1512 and referred to in CUB 1585.

Appeal of the insurance officer allowed and new disqualification for non-availability imposed.

October 28, 1955 (Affirmed)

CUB 1185

CLAIMS MATTERS (Married Women's Regulation).

VOLUNTARY LEAVING (Availability questionable, Capability for work, cause—pregnancy, Duration of disqualification, Prospects of other employment—general).

Section 43(1) of the Act (1953)

and

Section 137 of the Benefit Regulations (Pre-1955)

A 22-year-old claimant who had married on July 31, 1954, applied for benefit on March 7, 1955, stating she had worked as a stenographer from June 21, 1951 to March 4, 1955, when she was "Laid off by the employer—Lack of work only. I expect to be confined 15 May, 55." The employer reported the claimant's separation was on account of "pregnancy".

The claimant was disqualified from March 5, 1955 to July 31, 1956 because she had not established she could meet any one of the conditions stipulated in Benefit Regulation 137. The employer's treasurer reported that shortly before he left on a winter vacation in January 1955, the claimant had informed him that she wished to terminate her employment at the end of February and that upon his return at the beginning of March, a temporary stenographer employed with another department had taken over the claimant's duties. The court of referees unanimously maintained the disqualification on the grounds the claimant was not dismissed because of lack of work but because she was replaced. The claimant appealed further, stating that she had changed her mind after her original notice and had so advised the son of her immediate supervisor, (who was away

at the time) and he had agreed to her staying on; however, when the work became slack in another department where a temporary stenographer was employed, she was assigned to the duties of the claimant who was asked to leave. The Chairman of the court of referees granted leave to appeal because he felt the claimant's contention was worthy of consideration by the Umpire.

Upon appeal, it was held that the claimant's separation was a direct consequence of a notice of separation she had previously given her employer and that she must be considered as having voluntarily left within the meaning of Section 43 of the Act. It was further held that she did not have just cause "for reasons solely and directly connected with her employment" within the meaning of subsection 1(b) (iii) of Regulation 137 in that her reason for wanting to leave was her state of pregnancy which was the real and proximate cause of her separation. As pointed out in CUB 779, pregnancy cannot be considered a reason solely and directly connected with her employment; "in cases of voluntary leaving for health reasons, . . . the cause of the incapacity, indisposition or aggravation must, in its source and its effects be exclusively and objectively connected with the nature of the work; in other words, the incapacity, indisposition or aggravation must have taken place solely because and in the course of the work".

JURISPRUDENCE: CUB 779q. followed.

Followed in CUB 1380.

Appeal of the claimant dismissed.

November 10, 1955 (Reversed)

CUB 1187

VOLUNTARY LEAVING (Grievances raised with employer, Just cause not shown, Working conditions—pay).

Section 43(1) of the Act (1953)

A 41-year-old married claimant had last worked as a stamping officer for a provincial Board of Underwriters at a monthly salary of \$120.00 from October 1954, until February 28th, 1955, when she voluntarily left. She gave as reason that she had been promised an increase in pay similar to that received by all other employees but, six weeks later, had not received it. The manager confirmed the promise but stated that the Management Committee had not thereafter held a meeting before the claimant resigned.

The claimant was disqualified for having voluntarily left without just cause. The court of referees unanimously removed the disqualification on the grounds that the fault lay with the manager of the Board in not bringing the matter of a pay increase to the attention of the board of directors, so that the matter could be dealt with promptly; the court incidentally noted that the claimant had first been employed with the Board on January 1953, had been on leave of absence for two months during the summer, had returned that fall where she worked through to the summer of 1954 when she again took time off and then had returned to the Board at their request in October 1954.

Upon appeal, it was held that if the decision of the court of referees were allowed to stand, it would mean that any employee who had asked for an increase in salary and did not obtain it within a period that he or she considered appropriate would be justified in voluntarily leaving his or her employment. Such a principle would not meet the intent of the Act.

JURISPRUDENCE: Followed in CUB 1572.

Appeal of the insurance officer allowed.

November 10, 1955 (Varied)

CUB 1188

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision—finding of fact, Disqualification—extenuating circumstances).

VOLUNTARY LEAVING (Extenuating circumstances, Grievances not raised, Just cause not shown, Prospects of other employment not investigated beforehand, Working conditions).

Section 43(1) of the Act (1953)

The claimant who had been employed as a waiter in a hotel bar from August 23rd, 1954 to March 5th, 1955, voluntarily left because he could not get along with the proprietress and because of several other matters on which they did not agree, such as an adequate supply of beer glasses.

The claimant was disqualified for voluntary leaving without just cause. The majority of the court of referees maintained the disqualification on the grounds that the claimant had not taken advantage of the ample opportunity to take the matter up with his union of which he had been a member for eleven years, it being noted that the claimant had also alleged having had to work a 7-hour shift with no time off for lunch and been expected to produce \$34.00 a keg of beer as against a proper \$32.50. The dissenting member of the court pointed out that the employer's failure to allow a lunch period was contrary to the provincial Minimum Wage Act. In appeal, the claimant added that the heat in the hotel was shut off from time to time during the cold months. The employer denied the claimant's allegations but pointed out that the amount of \$33.60 was the estimate by the breweries for a keg of beer and admitted that the claimant had been requested to bring lunch and during busy periods, to eat it on the job.

Upon appeal, it was held that to show just cause for leaving, the claimant has to establish not only that his grievance was of very serious nature but that he had exhausted every reasonable means of having it remedied before leaving his employment. The court of referees found the claimant had failed to use the logical means of taking up his grievances with the union; however, the various reasons submitted by the claimant were considered to have been possibly extenuating circumstances for reducing the period of disqualification from six weeks to three weeks.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the claimant dismissed but period reduced from six to three weeks.

November 10, 1955 (Affirmed)

CUB 1189

ADJUDICATION PROCEEDINGS (Board of Referees: familiarity with local situation, Evidence: enforcement officer finding).

AVAILABILITY (Prospects of employment, Restricted as to duration and generally, Students: not directed and presumed non-availability unrebutted, Intention re work).

Section 29(1)(b) of the Act (Pre-1953)

A 21-year-old claimant who had worked as a mason's helper for a contractor, from April 1st, 1954 to September 8th, 1954, when he was laid off because the job was completed, filed an initial application for benefit on December 16th, 1954, and registered for employment in that occupation. While he had insufficient contributions to qualify for benefit his claim was allowed for supplementary benefit. It subsequently came to light that he was attending the local university and would be returning after his Christmas vacation.

The claimant was disqualified as not available for work for an indefinite period as from the date of his application. The claimant contended in appeal that he was available during his Christmas vacation period that is, until January 10th, 1954. The court of referees unanimously maintained the disqualification on the grounds that the claimant's prospects of employment were very remote, due to the special time element, his availability being restricted to the point that he was not to be deemed genuinely on the labour market.

Upon appeal, it was held there was no valid reason to disturb the finding of the court of referees which was familiar with the conditions of the labour field in the district.

JURISPRUDENCE: Followed in CUB 1528 and distinguished CUB 1643.

Appeal of the claimant dismissed.

December 5, 1955 (Reversed)

CUB 1191

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision—credibility, procedure, Evidence: burden of proof on claimant, enforcement officer finding, presumption, statement before and after disqualification, weight of evidence).

AVAILABILITY (Efforts to find work, Family enterprise, Intention of claimant, Married women, Presumption, Proof, Voluntarily left—delayed claim).

UNEMPLOYED (Family enterprise, Proof, Usual remuneration, Voluntarily left previous).

Section 29(1)(a) and (b) of the Act (1953)

A 22-year-old married claimant who had been last employed as a sales-clerk from September 13th, 1954 to December 24th, 1954 and, prior to this, had worked as a waitress in several local restaurants for periods ranging from two to nine months, applied for benefit and registered for employment as a waitress on February 7th, 1955, giving illness as a reason for her separation on Christmas Eve. Upon being informed the claimant was working, the local office referred an enforcement officer who found the claimant

serving behind the counter of a restaurant, she stated it was owned by her husband and a female partner, that she took turns with her tending the business but received no remuneration for her services.

The claimant was disqualified retroactively to the date of her claim, because she had failed to prove she was unemployed. To the local office's query, the claimant stated on April 26th, 1955, that for the past three weeks she had not been working in the restaurant at all and prior to that, she had been taking the female partner's place for four or five hours in the daytime when the latter was unable to come in. The insurance officer requested the court of referees in the event it found the claimant unemployed, to decide whether she was available for work. The court of referees, after having heard the claimant and the female partner, removed the disqualification by majority decision, noting among others, that the business had only been started in January. The Chairman of the court dissented on the grounds the claimant had remained unemployed from December 24th to the date of the hearing June 1st, 1955, that the partner had been unable to report for work, in his opinion, a considerable period of time and the claimant had not at any time sought employment on her own initiative.

Upon appeal, it was held that the fact that the claimant was serving behind the counter when the enforcement officer investigated, created a presumption she was not unemployed, which she had not successfully rebutted. She failed to give any information as to the number of days she had replaced the female partner or to establish that the work she performed was not customarily remunerable, in addition to which she was performing work in her registered and usual occupation during ordinary working hours. Furthermore, not only had she not sought employment on her own initiative but she ceased altogether to report to the local office in the middle of March.

JURISPRUDENCE: Considered in CUB 1404.

Appeal of the insurance officer allowed.

December 5, 1955 (Affirmed)

CUB 1193

ADJUDICATION PROCEEDINGS (Evidence: employment officer opinion, employer information).

AVAILABILITY (Pregnancy of claimant, Prospects of employment, Restricted as to duration and generally).

Section 29(1)(b) of the Act (1953)

A married claimant, who had worked as a bookkeeper from July 1951 to April 15, 1955, was released by reason of pregnancy, the employer reporting that he had found a replacement sooner than anticipated. The claimant stated she was capable and available for work and expected to be confined early in July 1955.

The employment officer expressed the opinion that the claimant was not "considered as generally acceptable to employers for employment in any occupation for which she was qualified", and on this basis the claimant was disqualified as not available for work. The court of referees unanimously maintained her disqualification.

Upon appeal, it was held that each case of availability should be judged on its own merits, according to the weight which must be given to a number of variable factors, including "the stage of the claimant's

pregnancy; the extent of her capability for work; her appearance as the result of pregnancy; the nature of the work for which she is qualified; her intention and mental attitude towards accepting employment; and her domestic circumstances."

It was held that in the present case, the out-weighting factor was the claimant's advanced stage of pregnancy (nearly seven months), the principle being that laid down in CUB 1023: "It is very doubtful that any employer would have hired her knowing that she would have been available for a short period of time only during which it is altogether likely that her capability for work would have been affected."

JURISPRUDENCE: CUB 1023q. applied.

Followed in CUB 1205.

Appeal of the claimant dismissed.

December 14, 1955 (Reversed)

CUB 1201

(French)

LABOUR DISPUTE (Conditions of employment, Directly interested, Existence of labour dispute, Loss of employment, Participation, Picketing, Premises, Proof, Shortage of work, Stoppage of work, Sympathetic strike, Union membership Voluntary leaving).

VOLUNTARY LEAVING (Just cause shown, Labour dispute involved, Suitability of employment as reason, Union relationships, Working conditions).

Sections 41 and 43 (1) of the Act (1953)

The claimant, in this test case involving ten claimants, was a linotype operator who had lost his employment with the Imprimerie Populaire Limitée, Montreal on April 21, 1955, under the following circumstances. His employer operated on the same premises, two distinct enterprises, one a newspaper "Le Devoir" and the other a commercial printing department each with its own staff and distinct collective agreement with the same local of the typographical union. A labour dispute had arisen in November 1953 between the newspaper and the union with respect to the conditions of work; agreement had been secured eventually on everything but salary which was referred to arbitration, a majority award being rendered on April 5th, 1955. On April 15th, the union advised the employer that its members had rejected the award. On April 20th, the typographers employed in composing by the newspaper, 25 in all, were given notice when they reported at 6 p.m. that they had been replaced. Next morning, a picket line was established, and at about noon, the entire personnel of the Commercial Department abandoned their employment.

The claimants though alleging "shortage of work—lockout", were disqualified under Section 41 of the Act. The court of referees unanimously removed the disqualification on the grounds that the claimants had voluntarily left their employment because of the confusion in the shop due to the inexperience of the new employees with the employer's practices and procedures, and imposed instead a disqualification of six weeks under Section 43(1).

Upon appeal, there were noted the principles of jurisprudence according to which the concerted withdrawal of a group of employees created the presumption that there was a labour dispute, a sympathetic strike of the

employees of one employer in favour of the employees of another employer was in itself a labour dispute even though they were not directly interested in the working conditions or result of the original dispute, and finally serving in a picket line can only be considered an act of positive participation in a labour dispute, even if the worker was not originally implicated.

It was clearly established in proof that the claimants had left of a common accord, a dispute had long existed between the union and the newspaper, this had resulted shortly before in the dismissal of 25 of their union brothers, and immediately after separation the claimants had joined the picket line. It was held that the claimant should have exhausted every means to have their grievances remedied before quitting and failing that, their voluntary withdrawal must be interpreted as the gesture of protest and coercion. The fact that the typographers received benefit is ascribable to the fact there was no stoppage of work in their department whereas the claimant's action, in addition to creating a new dispute, had completely paralysed their department's operation.

JURISPRUDENCE: Distinguished in CUB 1532 and applied in CUB 1623.

Appeal of the insurance officer allowed.

January 26, 1956 (Reversed)

CUB 1207
(French)

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous—credibility—reversed, Evidence: enforcement officer's opinion, statements before and after disqualification).

AVAILABILITY (Capable of work, Disqualification retroactive, Efforts to find work, Intention of claimant, Retired or separated from regular employment).

Section 29(1)(b) of the Act (1953)

A 73-year-old claimant who had applied for benefit five weeks after separation from his 17 years' employment giving as the reason "retirement age", was allowed benefit which he received for almost five months until January 7th, 1955. On January 13th he left Montreal for Miami from which he returned on April 12th. He was interviewed on the 19th by the local enforcement officer in the course of which he made a declaration to the effect, among others, that in 1953 as well as 1954, he had taken four weeks off following his regular three weeks' holiday for the purpose of resting up but had omitted however in 1954 to previously notify his employer who, in turn, had advised him when he reported back that he had been replaced; he stated further that since separating he was not capable of work nor had he sought any. The employer confirmed that the claimant had been dismissed because of a prolonged absence without permission.

The claimant was disqualified retroactively as not available for work under Section 29(1)(b) of the Act. The court of referees unanimously removed the disqualification in the light of argument of the claimant's counsel to the effect that the claimant had been sincere at the time of his original application and that he was on the labour market and available and that his subsequent declaration should have applied only from the date it was made.

Upon appeal, it was held that the claimant's statement to the enforcement officer was not open to any confusion and in the absence of any question as to its authenticity or to its having been obtained without fraud, the claimant's admission that he was not capable must be considered valid. The court of referees appeared to overlook that the claimant had not mentioned originally any disability and had registered in his regular occupation of care-taker without making any qualification. Furthermore, the reason given by the claimant for separation, retirement age, was far from reflecting the real cause of his dismissal.

JURISPRUDENCE: Followed in CUB 1453.

Appeal of the insurance officer allowed.

January 30, 1956 (Reversed)

CUB 1210

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous—credibility—reversed, Evidence: statement after disqualification, Interpretation).

AVAILABILITY (Antedate, Capable of work, Domestic circumstances).

CLAIMS MATTERS (Antedate: good cause not shown, conditions of entitlement—availability).

Section 38(6) of the Act (1953)

and

Section 122 of the Regulations (Pre-1955)

A mine labourer who had been laid off temporarily on June 9th, 1955, filed a claim on June 20th and applied to have it antedated from June 10th stating he had been sick since that date and had not been able to file a claim before.

The application to antedate was not approved on the grounds that the claimant had not shown good cause for delay in making his claim. The claimant appealed, stating that on June 10th the day he was to have reported to the local office, his oldest boy had had to be rushed to the hospital for an emergency operation and he had had to stay at home to look after his children and his wife who was sick in bed; furthermore, his youngest child was in the hospital at the time for an operation on June 12th in connection with a bad burn; on June 14th when his wife was able to get up, he himself had been stricken with summer flu for a period of three days. The court of referees unanimously allowed the application of antedate in the light of the above.

Upon appeal, it was held that on the basis of the claimant's statement it was obvious that he was not in a position to accept an offer of suitable employment either on the earlier date or at any time during the whole period and accordingly he had failed to meet the requirement of Regulation 122 as interpreted in CUBs 280, 711 and 941, that he prove his availability for work during the whole period for which antedate is requested.

JURISPRUDENCE: CUBs 280*, 711 and 941 followed.

Applied in CUB 1306.

Appeal of the insurance officer allowed.

*Printed in Selected Decisions (ed. 1950) and not digested to date.

January 30, 1956 (Reversed)

CUB 1212

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: procedure, rehearing at insurance officer's request, unanimous—finding of fact—reversed, Evidence: enforcement officer finding, Interpretation, Jurisdiction of adjudicating authority re legislation).

UNEMPLOYED (Family enterprise, Full working week—hours, Subsidiary, Usual remuneration).

Sections 29(1)(a) and 31(2) of the Act (1953)

The two claimants were brother and sister, age 19 and 18 years respectively, residing with their parents, who had filed claims on the 16th and 17th of December, 1954. Towards the end of February, 1955, the local enforcement officer discovered that they worked in a restaurant operated on the ground floor of their residence by their father who was regularly employed at a local mill. The restaurant was open from 9:00 a.m. till midnight, 7 days a week and the claimants declared that they shared the work and hours between them but did not receive any salary.

The claimants were disqualified as having failed to prove that they were unemployed. The brother's appeal was rejected by the court of referees but the sister's appeal was unanimously allowed following her testimony and that of her father. The brother obtained leave to appeal on the basis of the new facts submitted by their father who established among others that the business had been operated for some considerable time, had been taken over by himself, had been sold and reclaimed a number of times in November, 1954, for the purpose of additional income and also a guaranteed employment in view of his impending cessation of employment at the mill; furthermore, he had operated the business while regularly employed in the past, his wife handling it while he was at the mill, an arrangement that was easier still now that the children were no longer infants. In view of the circumstances, the insurance officer re-submitted the brother's appeal to the court of referees which allowed it.

Upon further appeal, it was held that the services rendered by the claimants were too much for an unemployed person to be considered unemployed as not following an occupation for the purpose of remuneration or profit. It was held furthermore that the hours of work and the fact that the occupation that they were following was ordinarily remunerated, precluded the claimants from benefitting under Section 31(2)a), even though it is possible the parents could have relieved the claimants of their work; however, the statutory authorities in adjudicating a claim must consider only the actual facts and the requirement of the law.

JURISPRUDENCE: Distinguished in CUB 1486.

Appeal of the insurance officer allowed.

February 9, 1956 (Reversed)

CUB 1215

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous—reversed, Evidence, employer information, irrelevant to decision, medical certificate, Interpretation, Jurisdiction of adjudicating authority re aspect not brought to appeal, re legislation).

AVAILABILITY (Capable of work, Intention of claimant, Married women, Pregnancy, Restricted as to duration, Separated from regular employment, Voluntarily left—delayed claim).

CAPABLE OF WORK (Married women, Pregnancy, Separation in this connection, Suitability for employment likely to be offered).

CLAIMS MATTERS (Married women regulation—incapacity by reason of illness).

Section 137 (Pre-1955) and 161 of the Regulations

A 21 year old claimant who was married on October 30, 1954, voluntarily left on June 28, 1955 her employment since June 30, 1954, as an operator in a munitions plant, because she was pregnant and her condition made her ill. She applied for benefit on September 1, 1955 and declared that she expected to be confined mid-January 1956, but felt capable and sought work at the present time; she submitted a medical certificate dated September 9 to the effect her health permitted her to work. The employer stated the claimant had been dismissed because it was against the company's policy to keep a pregnant woman in a dangerous work-area later than some 4½ months before confinement and a transfer elsewhere could not be arranged.

The claimant was disqualified for a period of two years under Section 137 of the Regulations. The court of referees unanimously maintained the disqualification but up to October 2, 1955 only, on the grounds that Section 161 of the Regulations which then came into effect provided grounds for the claimant's entitlement to benefit.

Upon appeal, it was held that the claimant was not entitled to benefit under Section 161 of the new Regulations any more than under Section 137 which it had replaced; for this reason it was not necessary to examine whether the court of referees had jurisdiction to consider Section 161 inasmuch as the insurance officer had not been seized of it previously. It was assumed that inasmuch as the evidence indicated the claimant's cessation of employment had been caused solely by her pregnancy, the court of referees was relying on subparagraph (iv) of paragraph 3(a) of Section 161, to wit the claimant's first separation had resulted for incapacity to work by reason of illness, injury or quarantine; pursuant to CUBs 1093 and 1094, simple pregnancy was held to not be an illness within the meaning of Section 161.

JURISPRUDENCE: CUBs 1093 and 1094 followed.

Distinguished in CUB 1219 regarding jurisdiction and followed in CUB 1380.

Appeal of the insurance officer allowed.

March 1, 1956 (Affirmed)

CUB 1218

ADJUDICATION PROCEEDINGS (Board of Referees: majority—credibility, Evidence, employment officer's opinion).

AVAILABILITY (Capable of work, Domestic circumstances, Prospects of employment, Restricted as to area, duration, light work and occupation, Separated from regular employment).

CAPABLE OF WORK (Sickness benefit).

CLAIMS MATTERS (Waiting period).

Section 29(1)(b) and 29(3) of the Act (1953)

The claimant was a surface labourer employed by a railway and coal company since 1935, who had been temporarily laid off in August, 1954, for shortage of work after which he had become a short-time claimant continuing to report as such up to May 27, 1955. On May 29, he had undergone an emergency operation for appendicitis; he was released from hospital on June 6 for a month's convalescence, a medical certificate stating he was able to work, however, as a flagman or a watchman during that period. The local office reported that the claimant was unable to qualify under Section 29(3) of the Act as having worked a full working week preceding his illness and as, therefore, unable to serve the non-compensable day; furthermore, there was no job opportunities for him during the period of convalescence and his employer had no suitable light work to offer.

The claimant was disqualified as not available for work within the meaning of Section 29(1)(b) of the Act. The court of referees maintained the disqualification by majority decision on the basis of the short duration for which he was available and his domestic responsibilities and physical condition which cast doubts on the truth of his statement that he was willing to go to another locality to find work.

Upon appeal, it was held that the claimant's availability for work in the terms of duration and scope was too limited to meet the requirements of the law.

JURISPRUDENCE: Followed in CUB 1436.

Appeal of the claimant dismissed.

March 1, 1956 (Reversed)

CUB 1220

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision—credibility, Disqualification—revision, Evidence: burden of proof on claimant, credibility, medical certificate, statements before and after disqualification, weight of evidence).

AVAILABILITY (Capable of work, Disqualification duration—generally, shortened, Intention of claimant, Pregnancy of claimant, Presumption of non-availability, Proof, Restricted as to duration and generally, Separated from regular employment, Voluntarily left—disqualification only as not available).

Section 29(1)(b) of the Act (1953)

The claimant who had worked as a cowl assembler from 1949 to July 13, 1955, applied for benefit on July 22, stating she had "quit because of pregnancy" and expected to be confined on or about December 12, 1955.

The claimant was disqualified for an indefinite period because she had not proved she was available for work. She then submitted a medical certificate to the effect that she would be able to do light work for another two months. The insurance officer reported that a married woman could work at the employer in question until she was pregnant six months and then must leave on a permanent separation. A majority of the court of referees removed the disqualification on the statements of the claimant's representative that the claimant had been engaged in heavy work where intense heat and strong odours of rubber prevailed and that she had asked to be transferred to some other work which she could handle during her pregnancy; the dissent was on the grounds the claimant could have handled her separation in a better manner and that the court should have been informed of the reasons which prevented her transfer to lighter work, considering she would have been allowed to work only some three months longer and would not have been rehired. The claimant's union then stated it was not the company's policy to attempt to find suitable light work for pregnant women who were unable to perform their usual work.

Upon appeal, it was held that the claimant's voluntary leaving on account of pregnancy created a presumption she was not available which could be overcome only by demonstrating exceptional circumstances which had not been done, the claimant's revised explanation regarding the transfer not being supported by satisfactory evidence and it being likely true, as the Court of referees found, "that the claimant did not pursue her request in a proper and thorough manner". It was further held, as contended by the Chief Claim Officer in his appeal, that a disqualification under Section 29(1)(b) could not be pre-determined, as was made abundantly clear in CUBs 445, 930 and 945.

JURISPRUDENCE: CUBs **445, 930 and 945** referred to.

Referred to in CUB 1552.

Appeal of the insurance officer allowed.

March 2, 1956 (Reversed)

CUB 1221

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous—credibility—reversed, Evidence: burden on claimant, employer information, medical testimony, Interpretation, Jurisdiction of adjudicating authority re legislation).

CAPABLE OF WORK (Married Women's Regulation, Permanent incapacity, Separation from employment in this connection).

CLAIMS MATTERS (Married Women's Regulation—incapacity by reason of illness).

MISCONDUCT (Absences).

Sections 137 (Pre-1955) and 161 of the Regulations

The claimant who had been married on February 23rd, 1955, applied for benefit on September 12th, 1955, stating that she had last worked in a general store for the period from October 15th, 1951 to September 3rd, 1955, and had been laid off in mid-August "on account of a shortage of work". The employer stated that the claimant had been dismissed because "due to indifferent health attendance on the job was too spasmodic".

The claim was disqualified for a period of two years from the date of her marriage pursuant to Regulation 137 (Pre-1955). The court of referees, after adjourning to obtain further information from the employer as to the real reason for separation, unanimously found that the claimant had been properly disqualified under Regulation 137 as having lost her employment because of indifferent health. It terminated the disqualification as of October 2, 1955 pursuant to subparagraph iv of Section 161(3)(a) to which it had been referred by the insurance officer.

Upon appeal, it was held that incapacity for work means, as pointed out in CUB 140 which involved an extension of qualifying periods, being "unable to follow any kind of employment"; furthermore, "there must be some measure of permanency to the incapacity". It was held that the present case did not meet these requirements, the only basis for the court of referees' finding being the employer's report as to the reason for separation without any medical evidence having been submitted and the onus lying on the claimant to establish that she came within the subparagraph in question, which she had not discharged.

JURISPRUDENCE: CUB 140* applied.

Applied in CUBs 1328 and 1465 and followed in CUB 1408.

Appeal of the insurance officer allowed.

March 23, 1956 (Affirmed)

CUB 1227

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous—finding of facts, Evidence, documentary).

LABOUR DISPUTE (Attributable to labour dispute, Loss of employment, Separation prior to stoppage).

Section 63 of the Act (1955)

The claimant who had worked as an assembler for General Motors at Oshawa, from May 17th to September 8th, 1955, had been temporarily laid off on account of shortage of work and had drawn benefit on the basis of his renewal claim from that date. On September 19th, 1955, the claimant's union called a strike. The large number of workers who had been on lay-off at the time continued to draw benefit. The claimant and those associated with him in this case were employees of a department of the company due to resume work either on October 3rd or October 17th.

The claimants were disqualified under Section 63 of the Act as the date they would have been recalled to work. The board of referees unanimously affirmed the disqualification, attaching considerable weight to the union strike bulletin dated October 6th, 1955, in which the projected recall dates established by the employer were set out.

Upon appeal, it was held that there was no valid reason to differ with the unanimous finding of the board which had properly considered the bulletin as substantiating the company's statement that, but for the strike, the claimants would have been recalled to work on October 17th, thus disposing of the suggestion that it was impossible for the company to deter-

*Printed in Selected Decisions (ed. 1950) and not digested to date.

mine the date of the claimant's recall to work in view of his slight seniority, and satisfactorily establishing the casual relationship between the labour dispute and the claimant's unemployment on October 17th.

JURISPRUDENCE: Followed in CUB 1232.

Appeal of the claimant's union dismissed.

May 15, 1956 (Affirmed)

CUB 1244

(French)

AVAILABILITY (Absence from local office area, Efforts to find work, Prospects of employment, Temporary non-availability).

A 50-year-old claimant who was a Senatorial secretary during the Parliamentary session, who had drawn benefit from August 5, 1955 until she was employed in the Department of National Revenue from November 4 to December 2, and due on December 5, had renewed her claim for benefit which was granted, left the local office area to go to Quebec City from January 1 to January 6, 1956.

The local office advised her on her next weekly visit, on January 9, that she could not draw benefit because she had not been available for work. The claimant protested on the grounds the period in question was a holiday for everyone, there was no offer for employment in the civil service during that period and she had to return to parliamentary work on January 10. The insurance officer referred the case to a court of referees which by majority decision found that the claimant had no right to benefit from December 31 to January 6, 1956. The dissent was on the grounds of the claimant's age and the period of the year and of the fact that the local office had told her they had no work in prospect for her.

Upon appeal, it was held that under the circumstances the fact that the claimant would not have obtained work during the period if she had remained in Ottawa, did not alter the fact that she had failed to notify the local office of her absence beforehand and for all practical purposes, had temporarily retired from the employment market, despite the obligation on all claimants to make personal and constant efforts with a view to finding work.

JURISPRUDENCE: Applied in CUB 1562.

Appeal of the claimant dismissed.

May 22, 1956 (Affirmed)

CUB 1246

AVAILABILITY (Efforts to find work, Presumption of non-availability, Students: not directed, course's compatibility in relation to usual working hours, intention re work, Voluntarily left—just cause).

Section 54(2)(a) of the Act (1955)

The claimant who had been employed in Vancouver as a railway car cleaner from June 25, 1954 to March 31, 1955 when he had left voluntarily to work for a brother in northern British Columbia, applied for benefit in Vancouver on June 10, 1955, stating he had found the work unsuitable and returned to Vancouver. An investigation by an enforcement officer of the Commission in the fall of 1955, established that the claimant had

registered for a course in barbering in December 1954 and had actually reported on April 18, 1955 and been in attendance from that date to November 9, 1955, five days a week. According to his own statement, the claimant had made no attempt to obtain employment, contending he had informed the local office when he filed his claim on June 10 but no particulars had been taken from him.

The claimant was disqualified retroactively from June 10, on the grounds that he was not available for work. The board of referees unanimously maintained the disqualification on the grounds it was highly improbable that the claims-taker who had several years' experience, had misinformed the claimant regarding his entitlement to benefit. The Chairman of the board gave leave to appeal.

Upon appeal, it was held that the claimant was fully engaged in a barber training course and was not looking for employment when he filed his claim for benefit in June and, furthermore, that his contention that he had advised the local office he was taking a course in barbering was not borne out by the evidence.

JURISPRUDENCE: Followed in CUB 1528.

Appeal of the claimant dismissed.

June 6, 1956 (Reversed)

CUB 1249

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous—credibility—reversed, Evidence: documentary proof, statements before and after disqualification and after Board of Referees, Umpire—appeal to).

AVAILABILITY (Efforts to find work, Student, not directed and presumed non-availability unrebutted, intention re work, Suitable employment refused—disqualification only as not available, Voluntarily left—delayed claim).

Section 54(2)(a) and 75 of the Act (1955)

A 27-year-old single claimant who had been employed as a claims auditor in the District Treasury Office of the Unemployment Insurance Commission since 1946, had voluntarily left her employment on September 5, 1955; she then filed a claim on November 1, 1955 registering as a general office clerk. In reply to a request for further information she advised the local office that she had separated because the work affected her health and, furthermore, rather than remain idle, had been attending a secretarial course since September 8, 1955 in which the hours of attendance were from 8:20 a.m. to 5:00 p.m., five days a week, and until noon on Saturdays.

The claimant was disqualified as not available for work. The board of referees unanimously removed the disqualification, the claimant having stated she was attending the course because she was unable to obtain other employment but was willing to discontinue the course if she could. The regional office then reported that the claimant had recently declined an offer of employment as a bookkeeper machine operator and, furthermore, that the authorities of her school indicated that she had been in communication with them in January and June, 1955 regarding attendance as a day student. The regional office also filed a copy of the claimant's letter of resignation in which she gave as her reason, the pursuit of studies.

The Umpire granted leave to appeal under Section 75 of the Act, although the delay had been exceeded.

Upon appeal, it was held that the claimant's contention that she had returned to school merely to fill in time was not borne out by the evidence and her later contention that illness was the real cause of separation had little weight; her final contention that she was willing to discontinue the course in the event of an offer of suitable employment was not supported by the evidence but rather the contrary. It was held, that "prima facie full-time attendance at a school is not consistent with availability for work. It is only when sincere efforts to find work and willingness to accept at once suitable employment, should it become available, are demonstrated that the presumption of non-availability is rebutted".

JURISPRUDENCE: Applied in CUB **1563**, followed in CUB *1528* and distinguished in CUBs *1573* and *1650q*.

Appeal of the insurance officer allowed.

June 14, 1956 (Varied)

CUB 1251

ADJUDICATION PROCEEDINGS (Board of Referees: procedure, *ultra vires*, unanimous—varied, Jurisdiction of adjudicating authority re aspect not brought to appeal).

AVAILABILITY (Suitable employment refused—joint disqualification, Voluntarily left—delayed claim—joint disqualification).

SUITABLE EMPLOYMENT (Availability—disqualification only for refusal, Change from usual wage rate, Good cause not shown, Voluntarily left—disqualification—for same reasons as present offer).

VOLUNTARY LEAVING (Availability questionable).

Sections 29(1)(b), 42(1)(a), 43(1) of the Act (1953)

A 29 year old, single claimant had voluntarily left his employment as a municipal groundsman in Saskatoon at \$10.92 a day on May 31, 1955, to go to Vancouver where he filed a claim on July 4. He was disqualified under Section 43(1). On August 4, 1955, the claimant refused to apply for full-time job in his registered occupation as a general office clerk because the wages were too low (\$180. to \$200. a month).

The claimant was then disqualified under Section 42(1) (a) for a period of six weeks. He appealed both disqualifications but these were unanimously maintained by the board. The board further disqualified the claimant from the date of refusal as not available for work with the meaning of Section 29 (1) (b).

Upon appeal it was held that the unanimous findings of the board were in accordance with the facts and the provisions of the law, with the exception that its finding as to availability was *ultra vires* inasmuch as the question of the claimant's availability was not before the board for decision, and must be treated as a nullity.

JURISPRUDENCE: Followed in CUBs *1529* and *1582*.

Appeal of the claimant dismissed except as regards availability.

June 21, 1956 (Reversed)

CUB 1255

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous—reversed, Evidence: employer information, Interpretation).

VOLUNTARY LEAVING: (Availability questionable change in occupation as cause, Just cause not shown, Proof—onus on claimant, Tantamount to voluntary leaving).

Section 60(1) of the Act (1955)

The claimant had worked as a sectionman for a railway company at Lethbridge from April 1950 to November 30, 1955, when he voluntarily relinquished his senior status as a class "A" sectionman to go into class "B", that of a seasonal employee, as a result of which he was then and there displaced by a senior employee and laid off.

The claimant was disqualified for voluntarily leaving his employment under Section 60(1) of the Act. The employer stated that the claimant knew beforehand that his relinquishment of seniority rights would occasion his loss of employment. The board of referees unanimously rescinded the disqualification.

Upon appeal, it was held that the claimant by his own conduct had placed himself in a position where work was no longer available for him, the evidence establishing that the claimant had explained at the time he resigned that he wished to become a seasonal or summer man and had given no satisfactory reasons for his decision to leave steady employment.

JURISPRUDENCE: Followed in CUB 1532.

Appeal of the insurance officer allowed.

June 27, 1956 (Varied)

CUB 1260

October 3, 1956 (Reversed)

CUB 1260A

ADJUDICATION PROCEEDINGS (Board of Referees: procedure—unanimous decision—reversed, Commission's responsibility re claims procedure and policy, Interpretation, Rehearing—new facts needed, Umpire—decision).

CLAIMS MATTERS (Dependency).

Sections 47(1) and (3) (replacing Section 33(1) and (3)a) of 1953 Act)

56 and 76 of the Act (1955)

and

Sections 168(2) and 188(b) of the Regulations (1955)

A 71-year-old claimant who had drawn benefit at the single rate on the basis of an initial application on August 8, 1955, applied on October 5 for benefit at the dependency rate on the grounds that his wife was being wholly or mainly maintained by him.

The dependency rate of benefit was not approved in the belief that the claim of benefit under Section 47(1) of the new Act which became effective on October 2, remained fixed for the duration of the benefit period and, pursuant to Section 188(b) of the Regulations, the claimant was only entitled to the rate applied to him prior to October 2. The claimant appealed, stating he could not apply for the dependency rate before October

5 because his wife was employed until that date. The board of referees unanimously allowed the dependency rate as from October 5 on the grounds there was nothing in Section 47(1) of the Act or Section 188(b) of the Regulations to the effect that the claims of benefit rate, whether single or dependency, remained constant.

Upon appeal, it was held that where Section 47(1) uses the phrase "weekly rate of benefit for a benefit period" the weekly rate is either that set out in column (2) of the Schedule, if the insured person has no dependent, or in column (3) if he has a dependent, there being no distinction between Section 47(1) and the similar provision in Section 33(1) of the old Act which it replaced and the latter having always been administered by the Commission in such a way as to allow variation of the rate according to the dependency factors existing at any given time. It was held that this earlier interpretation was a valid and permissible one and in accordance with the intention of Parliament, there being nothing in the new Act or Regulations which in clear terms requires or warrants a different interpretation. Section 47(3) (which is precisely the same as Section 33(3)(a) of the old Act) defines a dependent clearly in relation to the actual factual conditions existing from time to time and does not suggest for instance, that a man whose wife is being maintained by him is a person with a dependent *only* if he was so supporting her at the commencement of the benefit period. It was also further noted in Section 56 which relates to the deduction of certain earnings of weekly benefits that such deductions shall vary according to whether the insured person *has* or *has not* a dependent. It was also noted that the precise point was implicitly determined in CUB 741 according to which the rate of benefit varies with the claimant's dependency or single status. This was held to be unchanged regardless of administrative difficulties in the absence of clear and unambiguous language indicating Parliament's intention to radically change the administration of the Act and the practice which had long been followed and inferentially been approved by judicial interpretation in the past.

Inasmuch as it was noted however, that at the time of the claimant's application for the dependency rate, his wife had just separated from her own employment and eight weeks later had herself filed a claim for benefit which was allowed, the question as to whether or not she ordinarily earned income, including benefit, in excess of \$14.00 a week, as per Regulation 168(2) was referred back to the board of referees under Section 76 of the Act, for rehearing. Upon the board's unanimous finding that the claimant's wife had such earnings, it was held that the claimant was not entitled to benefit at the dependency rate on November 7, 1955 as wrongly found by the original board of referees.

JURISPRUDENCE: CUB 741 followed.

Referred to in CUB 1261 and followed in CUB 1270.

Appeal of the insurance officer maintained but for different reasons.

August 1, 1956 (Affirmed)

CUB 1268
(French)**ADJUDICATION PROCEEDINGS** (Evidence: credibility, medical certificates, statements before and after disqualification and after Board of Referees).**CAPABLE OF WORK** (Permanent incapacity, Proof, Separation from employment in this connection, Sickness benefit, Suitability for employment likely to be offered, Workmen's compensation).*Section 54(2)(a) of the Act (1955)*

A 41-year-old claimant applied for benefit, stating he had worked as a plumber from 1943 until the previous week, January 12, 1956, when he lost his employment by reason of a shortage of work. The employer reported the claimant had voluntarily left because his health did not permit him to perform the type of work required in his establishment. The claimant subsequently admitted this and declared that he could work only several days per week at the most, submitting a medical certificate to the effect he could not perform more than 40 hours of work per week when he would be in a position to resume working.

The claimant was disqualified as having failed to prove he was capable of work and then submitted another certificate from the same doctor certifying that he was suffering from mental poisoning or intoxication induced by his type of employment and could only perform light work. As a result, the insurance officer terminated the disqualification from March 5, 1956. At the hearing, the claimant's union representative submitted another certificate dated April 6 from the same doctor to the effect that the claimant, in view of his state of health as a result of excess work, could not do more than 40 hours of work per week. A majority of the board of referees decided it could not be directed to accept this correction in this manner on the grounds that if the doctor on February 6 had written "when the claimant would be in a position to resume work", he should have based himself on the situation existing at that time.

Upon appeal, it was held that the majority decision of the board was in accordance with the evidence, the board having rightfully concluded that the correction in the medical certificate could not be accepted as valid by reason of the manner in which it was made.

JURISPRUDENCE: Referred to in CUB 1552.

Appeal of the claimant's union dismissed.

August 28, 1956 (Affirmed)

CUB 1271

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: examination of witnesses, majority decision—labour dispute).

LABOUR DISPUTE (Existence of Labour Dispute, Incidents characteristic of labour dispute, Insistence and Resistance of parties, Shortage of work, Stoppage of work, Union membership).

Section 63 of the Act (1955)

The two claimants were a loom fixer and a carder respectively, for the Dominion Textile Company at Magog when they lost their employment on January 21, 1956.

The renewal of the collective agreement between this employer and the union in force from October 6, 1952 to October 5, 1954, had led to 24 public hearings before an arbitration board between March 29 and July 12, 1955, the board's award being finally published on October 31, 1955. Meetings between the two parties were held thereafter without success; on November 20 the union called a general strike meeting but the majority of the members voted against such action. The union then requested the intervention of the provincial Minister of Labour who assigned his Chief Conciliator to the dispute; conciliation meetings produced no results and early in January 1956 the employer discontinued the check-off of union dues.

On January 21, the employees of the carding room (second shift) cotton section quit their work as a protest against the dismissal of two of their co-workers for alleged decrease in production. During the night of January 22 and 23, the employer refused entry to the regular workers of the picker room, replacing them by new employees; on January 23 the carding employees began a sit-down strike. These stoppages led to a shortage of work in the weaving room, spool room, slash room and cloth room. Moreover, stoppages had occurred on or about January 21 in the printing room following dismissal of employees and also because colour shop employees had decided to take a half-hour off at lunch-time without permission. Of the two claimants, the loom fixer had been told by his supervisor that there was no work and that he had been ordered not to let him in, while the carder had left work with his co-workers in protest and upon their return on Monday, January 23, they had been told there was no work that day.

The claimants were disqualified under Section 63 (1) on the grounds that they had lost their employment by reason of a dispute over the renewal of the collective agreement. The board of referees maintained the disqualification by majority decision.

Upon appeal, it was held that the incidents causing the claimants' loss of employment were related to the labour dispute between the employer and the union, of which they were members; the various incidents, which affected other departments, were created by the employees as measures of coercion. The employer's reaction left no doubt that he attributed these troubles to the dispute and the measures he took were intended as reprisals against the collectivity of the workers. The majority of the board of referees who had the opportunity to examine the witnesses were of similar views.

JURISPRUDENCE: Referred to in CUB 1312.

Appeal of the claimants' union dismissed.

August 28, 1956 (Reversed)

CUB 1272

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—credibility—reversed, Evidence: medical certificate, statements before and after disqualification, Interpretation).

AVAILABILITY (Domestic circumstances, Intention of claimant, Married women, Prospects of employment, Restricted as to hours, light work, Suitable employment refused: joint disqualification).

SUITABLE EMPLOYMENT (Availability: joint disqualification, Domestic circumstances, Duration of unemployment: long, Good cause not shown, Prospects of other work).

Sections 54(2)(a) and 59(1)(a) of the Act (1955)

A married claimant was laid off for shortage of work from employment as a sales clerk for Woolworths in Toronto, her hours, from October 24th to December 30th, 1955, having been from 10:00 a.m. to 4 p.m., six days a week; previously she had worked two years for the same employer on a full-time basis. On February 21st, 1956, she was offered permanent employment as a sales clerk in a tuck-shop at slightly more than the prevailing rate, the hours of work being, from 8:00 a.m. to 5:00 p.m., five days a week; the claimant refused on the grounds that she could only work from 9:00 or 10:00 a.m. to 4:00 p.m., five days a week, Saturdays excluded, because she had to be home to prepare her husband's meals. The local office reported that the work was light and to a large extent sedentary and moreover, it could offer the claimant no employment at the hours requested.

The claimant was disqualified under Section 59(1)(a) for her refusal and indefinitely as not available under Section 54(2)(a). The board of referees unanimously removed the disqualifications in the light of a medical certificate recommending part-time sedentary work for the claimant.

Upon appeal, it was held that the claimant had had more than seven weeks to look for employment with working hours convenient to her and her refusal of the present offer definitely showed that she was not available for work. It was further held that the claimant's contention regarding her state of health and the medical certificate in support carried little weight in view of her original statement restricting her employment by reason of domestic responsibilities. "Domestic responsibilities, unless there are distressing circumstances which do not exist in this case, must not interfere with a claimant's availability for work".

JURISPRUDENCE: Distinguished in CUB 1347 re domestic restrictions.

Appeal of insurance officer allowed.

October 3, 1956 (Affirmed)

CUB 1285

(French)

VOLUNTARY LEAVING (Change in income as cause, Just cause not shown, Prospects of other employment not investigated beforehand, Working conditions).

Section 60(1) of the Act (1955)

A 20-year-old single claimant who had been employed as a bushworker from March 8th to 14th, 1956, applied for benefit stating that he had voluntarily left because there was too much snow and he could only earn

\$7.00 a day. The employer stated the claimant had earned an average of \$8.35 a day and that during the week of April 2nd the timber camp in question had had to be closed.

The claimant was disqualified from March 18 to April 7, 1956, for voluntarily leaving without just cause. The board of referees unanimously upheld the disqualification.

Upon appeal, the unanimous decision of the board of referees was upheld as being in accordance with the law and jurisprudence, inasmuch as the working conditions although less favourable than during other periods of the year, were inherent in the trade and only to be expected at that season. The claimant's argument that he drew approximately \$7.00 only is fallacious inasmuch as there should be included an amount of \$5.00 as a "cash order", deductions for lodging, food, cleaning, social and other insurances, canteen expenses (\$6.66) and repairs to cutting tools (\$3.12). Finally, as the claimant had no other employment in sight, he should have kept the one he had.

JURISPRUDENCE: Referred to in CUB 1500 re right to appeal of claimant's representative, l'Union Catholique des Cultivateurs.

Appeal of the claimant's representative dismissed.

October 3, 1956 (Affirmed)

CUB 1286
(French)

SUITABLE EMPLOYMENT (Change from usual conditions and wage rate, Conditions of employment: irregular, piece-work, seasonal, transportation facilities, wages, working conditions other, Duration of unemployment: long, Good cause not shown, Prevailing conditions).

Section 59(1)a) of the Act (1955)

A 50-year-old married claimant who had last worked as a bushworker for Price Brothers, from November 25, 1955 to January 9, 1956, refused an offer on March 9, 1956 of employment with Canadian International Paper Co., at Clova, 175 miles from Quebec where the claimant resided. Although the job was to last two months and was at the prevailing rate of \$6.00 a cord, the claimant preferred to wait until he was rehired by Price Brothers, his long time employer, upon re-opening of their camps.

The claimant was disqualified under Section 59(1)a) of the Act. L'Union Catholique des Cultivateurs appealed on his behalf contending that the cost of transportation and the depth of the snow precluded him from earning his usual wages. The board of referees unanimously maintained the disqualification.

Upon appeal, it was held that the real cause of the claimant's refusal was that he desired to work for Price Brothers only, as shown by his refusal on January 20 and March 9 of two other offers. Furthermore, it was held that insufficient money for transportation was not a good cause within the meaning of the Act, in addition to which there was no proof that the claimant was in that position. It was also held that while the working conditions for bushworkers are less favourable in March and April due to the depth of snow and the thaw, these conditions prevail in all lumber camps at this time of the year and are inherent in the occupation.

JURISPRUDENCE: Referred to in CUB 1413, and in CUB 1500 re right to appeal of the claimant's representative, l'Union Catholique des Cultivateurs.

Appeal of the claimant's representative dismissed.

October 3, 1956 (Affirmed)

CUB 1287

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision—credibility, Evidence: burden on claimant, conclusive, employer information, oath, statements after disqualification, Interpretation).

SUITABLE EMPLOYMENT (Change from usual conditions, Conditions: living conditions, seasonal, transportation facilities, Good cause not shown, Prevailing conditions, Trial period).

Section 59(1)a) of the Act (1955)

A 21-year-old single claimant who had last worked as a bushworker for Price Brothers, from September 20th, 1955 to January 16th, 1956, refused on February 21st an offer of employment with the Canadian International Paper Company at Windigo. The wages were \$6.50 to \$7.00 a cord, the job was to last until May 1st, and the employer agreed to refund the transportation costs in event of lay-off between March 1st and May 1st due to inclement weather or the termination of cutting operations. The claimant refused to apply on the grounds that there was too much snow and the employer would not pay transportation costs.

The claimant was disqualified under Section 59(1)a) of the Act and the board of referees maintained the disqualification by majority decision.

Upon appeal, it was held that there was no good reason for amending the decision of the board of referees in the absence of satisfactory proof that the working conditions were as described by the claimant or his representative, the claimant not having gone to the camp to see for himself and the statements which other lumberjacks who worked there are said to have made to the claimant's representative being unacceptable as proof, even though there might be some merit in the argument that the proof required of bushworkers in a case of refusal should be different from that required of an urban worker. Furthermore, it was held that while working conditions were evidently less favourable in March than in the fall and earnings fluctuated proportionally, such conditions were inherent in the occupation. Finally, it was held that the costs of transportation (\$18.60) were not excessive as regards the probable duration of employment.

JURISPRUDENCE: Referred to in CUB 1500 re right to appeal of the claimant's representative, l'Union Catholiques des Cultivateurs.

Appeal of the claimant's representative dismissed.

October 3, 1956 (Affirmed)

CUB 1289

(French)

SUITABLE EMPLOYMENT (Conditions of employment: irregular employment, living conditions, piece-work, seasonal transportation facilities, wages, Duration of unemployment: long, Good cause not shown).

Section 59(1)(a) of the Act (1955)

A 30-year-old single claimant who had last worked as a bushworker for Price Brothers, from August to December 1st, 1955 had gone to the lumber camp of the Canadian International Paper Company at Clova towards March 1st, but had returned without delay because the snow was four feet deep and, accordingly, he could not have earned a reasonable wage.

On March 15th, he was offered employment at the same company's camp at La Trenche, 100 miles from Quebec where he lived. The job was to last until May 1st, 1956 and was at the prevailing rate of pay, \$6.50 to \$8.00 a cord, but the claimant refused because the pay was too low and because he did not want to incur the transportation costs, having already seen the unsatisfactory conditions of work at another camp of the same employer.

The claimant was disqualified under Section 59(1)(a) and the board of referees unanimously maintained the disqualification.

Upon appeal, it was held that while the depth of snow and the effect of thaw adversely affected working conditions, this was inherent in the occupation of bushworker for the month of March. It was held that the cost of transportation (\$13.16) was not unreasonable having regard to the probable duration of the job and to the fact that the claimant would have to leave Quebec City if he wished to work at his trade.

JURISPRUDENCE: Referred to in CUB 1500 re the right of appeal of the claimant's representative, l'Union Catholique des Cultivateurs.

Appeal of the claimant's representative dismissed.

October 3, 1956 (Affirmed)

CUB 1290

ADJUDICATION PROCEEDINGS (Board of Referees: procedure, unanimous decision—credibility, Commission's responsibility re adjudication procedure, Evidence: claims record, conclusive, documentary, statements after Board of Referees, Insurance officer generally).

AVAILABILITY (Domestic circumstances, Intention of claimant, Restricted as to hours and light work, Suitable employment refused—disqualification only as not available).

SUITABLE EMPLOYMENT (Availability—joint disqualification, Domestic circumstances, Duration of unemployment—long, Suitability of offer—capability and disability, Voluntarily left last previous employment also—employment had been felt unsuitable—for same reasons as present offer).

Sections 54(2)(a) and 59(1)(a) of the Act (1955)

A 40-year-old married claimant who had worked as a part-time sales clerk and wrapper for the T. Eaton Company from October 1953 to July 10, 1955 had claimed benefit on September 23, stating that she had left her employment voluntarily because of a dislocated vertebra and that she would be "unable to work while taking treatments". On March 7, 1956, she had renewed her claim submitting a certificate from a chiropractic clinic to the effect that she was perfectly capable of resuming light work such as store clerking. On April 10, 1956, the claimant refused to accept an offer of steady employment as a sales clerk and wrapper with hours from 9:00 a.m. to 6:00 p.m., for a 40-hour week, on the grounds that she was not available for full-time work and could not do any lifting.

The claimant was disqualified for six weeks for her refusal and indefinitely as not available for work. The claimant appealed on the grounds that an impaired back and shoulder forced her to restrict her availability to clerking while the job offered entailed meat wrapping and the lifting of meat trays, which type of work she had to give up in the past. The board

of referees removed the disqualification under Section 59(1)(a) on the grounds that the job was unsuitable as being the same type as she had formerly had but unanimously maintained the disqualification under Section 54(2)(a).

Upon appeal, it was held that the claimant had restricted her availability to part-time employment and to work of a light clerical nature and as such was not available as found by the Board after some hesitation. This finding was conclusively supported by documents in the claimant's file, which apparently were not brought to the board's attention, including an undated letter in which the claimant stated that she did not undergo any treatment after voluntarily leaving her employment in July previous, and also a disclosure by the claimant in October 1955 after she was notified of employment by the local office, that she was not available for employment by reason of home duties.

JURISPRUDENCE: Distinguished in CUB 1587.

Appeal of the claimant dismissed.

November 15, 1956 (Affirmed)

CUB 1307

ADJUDICATION PROCEEDINGS (Evidence: employer information, statements before disqualification and after disqualification, Interpretation).

AVAILABILITY (Student: not directed and presumed non-availability un rebutted, intention re work, Voluntarily left in the first place: joint disqualification).

VOLUNTARY LEAVING (Availability; joint disqualification, Just not shown, Proof, onus on claimant).

Sections 54(2)(a) and 60(1) of the Act (1955)

A 26 year old claimant, who had been employed as a cream and milk grader from February 1953 to December 31st, 1955, applied for benefit stating that he had voluntarily left to take a three-month course at a provincial agricultural school.

The claimant was disqualified under Section 60(1) for a period of six weeks and under Section 54(2)(a) for an indefinite period as not available. The board of referees unanimously dismissed the claimant's appeal.

Upon further appeal, it was held that the evidence did not show that the claimant had been laid off, as contended by his union, and that his desire to find other employment while attending school was genuine but rather that he had separated temporarily with the sole objective of obtaining a qualifying certificate. This was borne out by his statement, first on applying for benefit and later, in his appeal to the board, which was confirmed by his employer, that he would get his job back once qualified, and by the fact that he did return. It was pointed out that it was not the intent of the Act to subsidize the training of workers who have regular employment, benefit being paid to those genuinely unemployed who are directed by the Commission to attend a course of instruction to facilitate their chances of obtaining employment.

JURISPRUDENCE: Followed in CUBs 1424 and 1425.

Appeal of the claimant's union dismissed.

November 15, 1956 (Reversed)

CUB 1308

ADJUDICATION PROCEEDINGS (Board of Referees: *ultra vires*, unanimous decision—reversed, Disqualification: indefinite, procedure, wording, Jurisdiction of adjudicating authority: aspect not brought to appeal, aspect raised by adjudication).

AVAILABILITY (Efforts to find work, Pregnancy, Presumption of non-availability, Prospects of employment, Restricted to light work, Voluntarily left in the first place: disqualification only as not available, disqualification only for voluntary leaving).

Sections 54(2)(a) and 60(1) of the Act (1955)

A 25-year-old married claimant applied for benefit stating that she had left her employment after 3½ years as an assembler welder by reason of pregnancy and expected to be confined 7½ months later.

The claimant was disqualified as not available until after confinement. The board of referees unanimously found that the claimant had left voluntarily because she had taken two weeks' leave of absence for which permission had been refused and not because of pregnancy. For this reason it imposed instead a six weeks disqualification under Section 60(1), finding that she could have been considered as acceptable to employers as of the date of her application for benefit.

Upon appeal, it was held that the evidence clearly indicated that the claimant had left her employment voluntarily on account of pregnancy and, in line with previous decisions, this created a presumption that she was not available for work, which in turn she had failed to rebut by demonstrating the exceptional circumstances necessary, the sole fact that she may have requested lighter work with her former employer being insufficient and there being no evidence she had sought employment elsewhere. Finally, it was held that the board of referees' decision under Section 60(1) of the Act was *ultra vires* as it had not been before the board. It was also considered inadvisable that a claimant be disqualified as not available until after confinement as later circumstances might vary and then warrant a contrary finding.

JURISPRUDENCE: Followed in CUBs 1529 and 1582 re *ultra vires*.

Appeal of the insurance officer allowed.

November 21, 1956 (Affirmed)

CUB 1309

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: claimant present, unanimous decision—finding of fact).

LABOUR DISPUTE (Directly interested, (not) Financing, (not) Participating, (not) Union member).

Section 63 of the Act (1955)

The claimant, who had worked as a mechanic at the Dominion Textile Company at Drummondville, P.Q., lost his employment on April 27, 1956, as a result of a strike. The strike arose following the unsuccessful efforts of the company and the union, which represented all workers other than office employees and foremen, to conclude a collective agreement to replace that which had expired on October 5, 1954.

The claimant was disqualified under Section 63 of the Act and appealed to the board of referees alleging that he was a night mechanic and also a foreman, and had not participated in the strike and was satisfied with his wages. The board unanimously affirmed the disqualification.

Upon appeal, it was held that the unanimous decision of the board was in accordance with the law and its jurisprudence: the board after examining the claimant, had unanimously concluded that the claimant's working conditions were governed by the collective agreement which was the object in dispute, and in fact, the settlement of the dispute resulted in the claimant receiving a partially retroactive wage increase. The claimant was accordingly directly interested even though he did not participate, nor finance nor even was a member of the union in dispute.

JURISPRUDENCE: Followed in CUB 1521A.

Appeal of the claimant dismissed.

November 22, 1956 (Reversed)

CUB 1313

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—reversed, Interpretation).

AVAILABILITY (Capable of work, Restricted generally and as to hours and days, Retired from regular employment).

EARNINGS ((not) Bonuses, Retirement pay).

UNEMPLOYED (Contract of service, Retirement leave).

*Section 57(1) of the Act (1955)
and*

Sections 158(2), 172(1)(a) and 172(2)(a) of the Regulations (1955)

A 60-year-old claimant on applying for benefit, stated he had retired after 44 years' employment with a commercial bank and was on leave of absence for one year with full salary after which he would be pensioned off. In the course of an interview at the local office he also stated that because of his physical condition he could not accept full-time employment but would be available half days, "if he could handle it without inconvenience".

The claimant was disqualified for an indefinite period as not available. In appeal to the board of referees, the board was requested by the insurance officer to also consider the applicability of Regulations 158(2) and 172 to the monies paid to the claimant while on leave. The board unanimously found the claimant not available for work but also that he was unemployed as the monies came within the exception contained in Regulation 172(2)(a), namely, "bonuses or gratuities paid for past services".

Upon appeal against the latter finding, it was held that while the claimant might be unemployed within the meaning of Section 57(1) of the Act, the monies paid during his leave must be taken into account as earnings pursuant to Regulation 172(1)(a), the existence of a contract of service ruling out the benefit of the exception provided by Regulation 172(2)(a).

JURISPRUDENCE: Followed in CUB 1622. Distinguished in CUB 1698.

Appeal of the insurance officer allowed.

December 20, 1956 (Affirmed)

CUB 1323

CAPABLE OF WORK (Availability affected as a result, Permanent incapacity, Separation from employment in this connection, Suitability for employment likely to be offered).

Section 54(2)(a) of the Act (1955)

A 45-year-old trainman who had met with an accident while off duty in which he lost two toes on his left foot, filed a claim five days later in which he registered for employment as a taxi dispatcher. He submitted a medical certificate to the effect that he was capable of performing light duties such as "office or phone work". The local office reported that the claimant was walking on crutches.

The claimant was disqualified for an indefinite period as incapable of work within the meaning of Section 54(2)(a) of the Act. The local office reported that the claimant had resumed his regular job a month after the accident.

The board of referees unanimously dismissed the appeal mainly on the grounds that the claimant was not available for work as there was no evidence that he qualified for any kind of employment except railway work and as it was unlikely that prospective employers would hire him knowing that he would be returning shortly to his regular employment.

Upon appeal, it was held that there was no alternative to the unanimous finding of the board which was in accordance with the Act and the jurisprudence.

JURISPRUDENCE: Followed in CUB 1436.

Appeal of the claimant's union dismissed.

December 20, 1956 (Affirmed)

CUB 1324

UNEMPLOYED (Availability for full-time work, Contract of service, Engaged on own account).

Section 54(1) of the Act (1955)

57-year-old claimant, who had been drawing benefit following the loss of his employment as a hotel clerk, was discovered by the local office seven months later to have been soliciting business for a local firm of furniture movers since two weeks after his separation, being paid \$35.00 a week approximately for his expenses. The claimant alleged that he had discussed the effect of such employment on his benefit rights with an official of the local office and as a result had understood expense monies need not be declared.

The claimant was disqualified as having failed to prove that he was unemployed within the meaning of Section 54(1) of the Act. The official of the local office stated that he remembered talking to the claimant but the conversation had had no bearing on the claimant's benefit rights. The board of referees dismissed the appeal by majority decision on the grounds that the claimant carried out his duties under direction of the manager of the firm and was bound to follow his general instructions, CUB 1146 being also noted.

Upon appeal, it was held that the claimant was not unemployed, whether or not he worked under contract of service, as the evidence clearly indicated the nature of business activities, whether self-employment or not, was such that it would have prevented him from accepting full-time employment in a particular week.

JURISPRUDENCE: CUB 1146 applied by the board with respect to employment remuneration.

Followed in CUB 1528.

Appeal of the claimant dismissed.

January 24, 1957 (Affirmed)

CUB 1329

AVAILABILITY (Pregnancy of claimant, Presumption of non-availability, Voluntarily left—joint disqualification and then only as not available).

VOLUNTARY LEAVING (Availability—disqualification as not available only—joint disqualification, Capability cause—pregnancy, Just cause shown).

Sections 54(2)(a) and 60(1) of the Act (1955)

A 24-year-old claimant who voluntarily left her six years employment as a comptometer operator and bookkeeper on account of pregnancy, claimed benefit three weeks later registering for employment in the same combined occupation.

The claimant was disqualified for voluntary leaving without just cause and indefinitely as not available for work. The claimant submitted a medical certificate to the effect that confinement was expected five months later and she had been advised to leave her job as it entailed climbing stairs and heavy lifting. On this basis the insurance officer removed the disqualification under Section 60(1). The board of referees dismissed the claimant's appeal by majority decision.

Upon further appeal, it was held that the removal of the disqualification under Section 60(1) did not alter the fact that she had left her employment voluntarily on account of pregnancy. According to long standing jurisprudence, there is a presumption of non-availability for work in such cases. It was held that this presumption can be overcome only by demonstrating exceptional circumstances which had not been done in this case.

JURISPRUDENCE: Distinguished in CUB 1614 re exceptional circumstances.

Appeal of the claimant dismissed.

February 4, 1957 (Rehearing)

CUB 1331

August 16, 1957 (Reversed)

CUB 1331A

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision, finding of fact, Evidence: surveys, local office, Interpretation, Jurisdiction of adjudicating authority re procedure, Rehearing on Umpire's referral—new facts needed).

SUITABLE EMPLOYMENT (Conditions of employment—hours, wages, Duration of unemployment—long, (not) Prevailing conditions, Proof).

Sections 59(1) and 76 of the Act (1955)

A 41 year old married claimant was laid off from employment in Vancouver, as a charwoman at \$160.00 a month. Five months later, the claimant refused to accept an offer of permanent employment as an officer

cleaner at the Airport, Sea Island, B.C. at \$118.00 a month, because it entailed starting at 4:30 p.m. and for the past five years she had worked only from 6:00 p.m. on, by reason of her domestic responsibilities.

The claimant was disqualified under Section 59(1)(a) of the Act. Her union appealed on the ground that the wage rate was less than the union rate of pay. The majority of the Board affirmed the disqualification but reduced it from six to three weeks on the grounds that the claimant should have been given more time to find work more suitable to her.

The Umpire directed a rehearing under Section 76 on the question of fact of whether or not the employment was at the prevailing rate. At the rehearing, it was argued on behalf of the claimant that the law makes no mention of prevailing rates of earnings but simply of rates of earnings observed by agreement between employers and employees, and, failing such agreement, by good employers and from this, it was inferred that where there were agreements, employment on any other terms must be unsuitable. The Umpire held, however, that such argument could only prevail where a general agreement prevails throughout a district and that reference to earnings under Section 59 (2) (b) meant as in earlier decisions the prevailing or average rate in the district. The majority of the board, although acknowledging a considerable variance between the union rate and the prevailing rate as determined by the local office had felt constrained to respect the formula devised by the Commission and had maintained the disqualification.

The Umpire held that the evidence showed a fair number of reputable employers pay a much higher wage than the maximum shown in the local office surveys (\$0.73 to \$1.07 an hour) and held accordingly, that the survey had not provided a suitable test of the prevailing rate and there was, therefore, no satisfactory evidence that the wage offered the claimant was the average rate prevailing in the district.

JURISPRUDENCE: Followed in CUB 1391.

Appeal of the claimant's union allowed.

February 6, 1957 (Affirmed)

CUB 1336

ADJUDICATION PROCEEDINGS (Commission's responsibility re claims procedures, disqualification procedure, Evidence: employer responsibility).

CLAIMS MATTERS (Benefit period, Contributions, Local office practices, Qualification).

A 69-year-old claimant was retired after 47 years' service on June 2, 1955, at which time he was given one month's vacation pay and six months' leave of absence with pay. His initial claim for benefit filed on June 28 was not proceeded with on the ground that he failed to prove he was unemployed. On January 1, 1956 the claimant went on pension and two days later began drawing benefit on a renewal claim until June 30, 1956, when his benefit period expired. Upon filing another initial claim on July 3, 1956, it was established he had insufficient contributions to establish a benefit period even when he was granted an extension of the qualifying period with respect to the 27 weeks of leave with pay. The board of referees unanimously dismissed his appeal, the claimant, however, being given leave to appeal to the Umpire.

Upon appeal, it was held that misinformation from an employer as to the claimant's benefit rights is not a reason for re-adjusting a benefit year and, furthermore, that it is not the duty of the officers of the Commission and, in fact not, even proper for them, to volunteer advice to enable claimants to obtain the maximum benefit payable.

JURISPRUDENCE: Followed in CUB 1451.

Appeal of the claimant dismissed.

February 25, 1957 (Reversed)

CUB 1340

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous—credibility—reversed, Commission's responsibility re claims procedures, Evidence: statements or admission—before disqualification, Insurance officer—general).

AVAILABILITY (Domestic circumstances, Intention of claimant, Pregnancy of claimant, Voluntarily left—delayed claim).

Section 54(2)a of the Act (1955)

A 35-year-old married claimant who had voluntarily left, after seven years, her employment as a cashier in a local groceteria because she expected to be confined five months later applied for benefit a month after confinement. In reply to the local office's request for information, the claimant refused to disclose the arrangements she had made for the care of her child.

The claimant was disqualified for an indefinite period as not available for work. The claimant appealed to the board of referees contending she had made tentative arrangements but it was unreasonable to expect definite arrangements until a definite employment opportunity was foreseeable. The board unanimously allowed her appeal.

Upon appeal, it was held that it was not only the insurance officer's right but his duty to obtain the all available facts before a proper conclusion could be drawn regarding the applicant's true state of mind regarding employment. It would have sufficed if the claimant could in truth have advised that, although she had not employed a guardian, she had made conditional arrangements whereby such guardian would be available on short notice.

JURISPRUDENCE: Applied in CUB 1478 and followed to in CUB 1505.

Appeal of the insurance officer allowed.

February 25, 1957 (Reversed)

CUB 1341

(French)

CAPABLE OF WORK (Separation from employment in this connection, Sick-ness benefit).

CLAIMS MATTERS (Benefit period termination and commencement, Disqualification, Qualification, Waiting period).

Sections 54(2)a, 55 and 66 of the Act (1955)

The claimant had worked until February 24 when he was laid off temporarily for shortage of work and renewed his claim for benefit. On February 28, he was hospitalized and on March 3 his benefit period terminated.

A new benefit period was established on March 4th but the claimant was disqualified under Section 54(2)a) of the Act as incapable of work, the insurance officer pointing out that the claimant could not take advantage of Section 66 with respect to the new benefit period until he had served the necessary waiting days.

The board of referees removed the disqualification on the grounds that the claimant could easily have delayed going to the hospital and thus served the waiting days before, but instead, ignoring this technical requirement, had hastened to take advantage of his enforced unemployment.

Upon appeal, it was held that under Section 55 of the Act entitlement to benefit is acquired only after the expiry of the waiting period which the claimant in this case could not serve so long as he was disqualified as incapable. In other words, the end of one benefit period and the establishment of another created new circumstances which extinguished any right previously acquired pursuant to Section 66.

JURISPRUDENCE: Followed in CUBs **1493** and **1580**.

Appeal of the insurance officer allowed.

February 29, 1957 (Affirmed)

CUB 1350

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision—credibility, Evidence: employment history, employment officer opinion).

SUITABLE EMPLOYMENT (Availability—disqualification only for refusal, Change from usual occupation and wage rate, Conditions of work—experience, skilled, Domestic circumstances, Failure to apply, Good cause not shown, Prevailing rate, Prospects of work, Reasonable interval, Voluntarily left previous employment also—subjective reasons).

Section 59(1)(a) and (3) of the Act (1955)

A 23-year-old claimant, residing at Port Hope, applied for benefit stating that, 12 days earlier, she had voluntarily left her employment as a comptometer operator at \$55.00 a week in Toronto, because she was getting married. Two months later, the claimant refused an offer of permanent employment as a bookkeeper at the prevailing rate of \$35.00 a week on the grounds that it was not in her line of work. The local office commented that openings in her occupation were practically non-existent and that her prospective employer considered the claimant quite suitable.

The claimant was disqualified for six weeks under Section 59(1)(a) of the Act. The claimant appealed to the board of referees stating that she was prepared to accept other work than that of comptometer operator, if necessary, provided it was at the prevailing rate for that occupation. The board of referees dismissed her appeal by majority decision.

Upon appeal, it was held that if she had been eager to work she would have applied for that job and let the employer decide as to her qualifications, the employer in fact being quite willing to hire her on the strength of her employment record. Furthermore, the lapse of two months of unemployment was a reasonable interval within the meaning of Section 59(3) and the claimant should not have insisted on wages comparable to those paid comptometer operators in the district.

JURISPRUDENCE: Followed in CUBs **1579** and applied in CUBs **1576q.** and **1583** with respect to employer discretion re qualification.

Appeal of the claimant dismissed.

March 25, 1957 (Affirmed)

CUB 1357

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—credibility, Evidence: burden of proof on claimant, claims experience).

CLAIMS MATTERS (Antedate: good cause for delay not shown, circumstances not beyond claimant's control).

Section 46(3) of the Act (1955)

and

Section 150 of the Regulations (1955)

A 54-year-old married claimant in employment as a millwright for 22 years, who had been laid off because of a plant shut-down August 31st, 1956, wrote to the local office in this regard on September 19th, stating he had since done casual work at the plant on September 9th, 10th, 13th and 14th and had returned to his regular job on September 17th. Claim and antedate forms were then sent him which he returned to the local office on October 1st, requesting antedate from September 2nd to September 9th, giving as reason for delay that he did not know that the plant shut-down would last another two weeks.

The application for antedate was not approved and the board of referees unanimously dismissed the claimant's appeal. The claimant's union, in its appeal to the Umpire, stated that two local office officials had briefed a company's employee on the proper claims' procedure in the course of their visit on August 12th when the initial plant shut-down occurred; when the claimant was laid off on August 31st, this employee was not available and the claimant received no instructions, but he did mail the U.I.C. forms given him in the belief he was thus filing a claim.

Upon appeal, it was held that there was no valid reason to modify the unanimous finding of the board as the reason the claimant gave for delay was insufficient and his completion of the original forms could be interpreted as a desire to receive benefit but not to register for employment, a basic condition in claiming with which the claimant who had made an application for benefit three years previous, should have been acquainted. It was held accordingly that the claimant had not been prevented from filing his claim by conditions beyond his control, which is essential (CUB 711) in order to resort to the exceptional measure of antedating.

JURISPRUDENCE: CUB 711 applied.

Followed in CUBs 1367 and 1368.

Appeal of the claimant's union dismissed.

April 24, 1957 (Affirmed)

CUB 1363

CLAIMS MATTERS (Married Women's Regulation—leaving to take up residence with her husband).

VOLUNTARY LEAVING (Domestic circumstances—marriage, Married woman leaving the area, Prospect of other employment not investigated beforehand).

Section 161(3) (a) (v) of the Regulations (1955)

A 22-year-old claimant who had worked as an assembler for the Canadian General Electric Company, Peterborough, Ont., since April 1953, had

married on October 8, 1955 and left on six months' leave of absence on April 12, 1956 because of pregnancy. She had given birth on July 28, 1956 and then applied for benefit on September 24, 1956, stating she was looking for work in Brockville where she was now residing with her husband.

The claimant was disqualified for the period of two years following her marriage pursuant to Regulation 161. The board of referees unanimously allowed her appeal on the grounds that leave of absence without pay does not constitute separation from employment and that separation in the claimant's case occurred when she left Peterborough on April 30, 1956 to take up residence with her husband in Brockville; accordingly she came within the exception provided by subparagraph (3) (a) (v) of Regulation 161.

Upon appeal, it was held that inasmuch as the evidence indicated that it was clearly and firmly understood that the claimant was to resume her employment at the conclusion of her leave and, accordingly, that the employer-employee relationship was not indefinite and dormant during such leave, the claimant's first separation from employment after marriage was in consequence of her leaving to establish residence elsewhere with her husband as per the exception provided by the Regulation.

JURISPRUDENCE: Followed in CUB 1398.

Appeal of the insurance officer dismissed.

July 3, 1957 (Affirmed)

CUB 1374

ADJUDICATION PROCEEDINGS (Board of Referees: familiarity with local situation, unanimous decision—general, Evidence—employment history).

AVAILABILITY (Capable of work, Disqualification duration—indefinite—retroactive, Proof, Prospects of employment, Restricted generally, hours and days and part-time, Students, not directed and presumed non-availability un rebutted, course's compatibility in relation to usual working hours, intention re work, Voluntarily left—delayed claim—just cause).

CAPABLE OF WORK (Availability affected as result, Permanent incapacity, Separation from employment in this connection, Suitability for employment likely to be offered).

A 31-year-old claimant who had worked as a shipper for a bakery from August 31, 1953 to August 17, 1955 when he became ill with poliomyelitis, applied for benefit on June 19, 1956, stating he was now available for work four to five hours a day, and was allowed benefit. After it came to the attention of the local office in September 1956, that the claimant was attending a course at a University, the payment of benefit was withheld, pending investigation. The claimant wrote on October 13, stating he was attending a part-time course but was available for work on Wednesday and Friday afternoons, every evening and all day Saturday. In a signed statement to the Commission's enforcement officer on October 17, the claimant explained that because of a crippled leg resulting from the polio, he was unable to follow his former occupation as a shipper for which reason he had gone back to school. Furthermore, he was willing to discontinue the course provided the wages offered were equal to those he formerly received, namely, \$55.50 a week.

The claimant was disqualified for an indefinite period retroactively to September 26, 1956 on the grounds he was not available for work. The board of referees unanimously maintained the disqualification but the Chairman gave leave to appeal.

Upon appeal, it was held, as stated in many previous decisions, that "availability for work is not only a subjective matter which is considered in the light of the claimant's intention and mental attitude towards accepting employment but it is also an objective matter which must be determined in the light of his prospects for employment in relation to a certain set of circumstances beyond his control or which he has deliberately created." In this regard it was held that the claimant by deciding to attend the University course had considerably reduced his availability for work which was already restricted to clerical work, four or five hours a day. It was held that the board of referees which was well acquainted with the local employment opportunities had come to a unanimous conclusion which was further strengthened by the fact that the claimant was still unemployed when he filed his appeal to the Umpire.

JURISPRUDENCE: Applied in CUB 1563q.

Appeal of the claimant dismissed.

July 15, 1957 (Varied)

CUB 1376

ADJUDICATION PROCEEDINGS (Board of Referees: majority decision—finding of fact, Evidence: burden of proof on claimant, employer information and responsibility, medical testimony).

AVAILABILITY (While not fully Capable, Efforts to find work, Intention of claimant, Prospects of employment, Restricted to light work, Separated from regular employment).

CAPABLE OF WORK (Availability affected, Permanent incapacity, Separation in this connection, Sickness benefit, Suitability for employment likely to be offered, Workmen's Compensation).

CLAIMS MATTERS (Punitive disqualification).

Sections 54(2)(a) and 65 of the Act (1955)

A 60-year-old married claimant who stated on filing claim on November 24th, 1955 and registering for employment as bricklayer, that he had worked as such for the International Nickel Company, Copper Cliff, Ontario, from 1931 to August 7, 1955 when he was "pensioned off due to age limit", was discovered in the course of a spot check by an enforcement officer of the Unemployment Insurance Commission in July 1956, to be receiving a disability pension from his employer of \$111.00 a month, since November 17, 1955, the claimant stating that he was a sick man.

The claimant was disqualified from benefit retroactively to November 20, 1955 because he had failed to prove he was capable of work. The enforcement officer reported (September 10, 1956) that the claimant considered himself capable of light work as a bricklayer of fire bricks and his previous statement that he was sick was intended to mean that he had hurt his back some years previous and did not want to take heavy work. In his appeal to the board of referees the claimant also pleaded language difficulty. On October 26, 1956 the insurance officer imposed a punitive disqualification under Section 65 in the amount of \$144.00. The board of referees maintained the two disqualifications by majority decision following testimony by the claimant and his union representative.

Upon appeal, it was held the question at issue was one of fact and no medical evidence had been submitted to support the contention of the

claimant's representative that notwithstanding retirement by reason of disability, his health permitted him to remain in the labour field (although outside the industry and of work involving intense heat) and furthermore there was no proof the claimant had made any effort to find work. It was held further that the disqualification under Section 65 was unwarranted on the grounds that one's own statement of one's own capability or availability is a subjective matter and the claimant in the absence of proof to the contrary, in good faith may very well have considered that he met these conditions when, in the eyes of the law, such was not the case.

JURISPRUDENCE: Applied in CUB 1481q. re Section 65 and in CUB 1684.

Appeal of the claimant dismissed under Section 54(2)(a), allowed under Section 65.

August 14, 1957 (Affirmed)

CUB 1385

LABOUR DISPUTE (Direct interest, Grade or class, Loss of employment, Parties to the dispute, Union member, Working conditions).

Section 63 of the Act (1955)

The claimants had previously been employed with the Massey-Harris and Ferguson Limited for a number of years in their respective trades and had been in the employ of the John Inglis Company Limited for a few days when they lost their employment on September 24, 1956 because of a strike at the company's premises.

The claimants were disqualified under Section 63 of the Act. They appealed to the board of referees, stating they were still on the seniority rolls of their former employer and had only taken temporary and casual work, and contending therefore they had no interest whatsoever in the dispute. The board of referees unanimously dismissed their appeal on the grounds that while they commenced work in classifications different from those in which they served with their previous employer, they had to be considered as belonging to a grade or class of workers within the meaning of Section 63 (2) (b).

Upon appeal, it was held that the claimants had clearly lost their employment within the meaning of Section 63 (1) and the facts also clearly showed that aside from any consideration of "grade" and "class" the claimants themselves were parties to the dispute inasmuch as it related to the terms and conditions of their employment. Indeed, their receipt of an increase in wages upon return to employment with the Inglis Company comes squarely within the concept of direct interest in a labour dispute. CUB 531 involving a pressman who had lost his temporary employment as a seaman by reason of labour dispute and had returned to his regular trade thereafter, was distinguished from the present case in which the presumption that the claimants would resume their temporary employment and stand to lose or gain as a result of the dispute is fully borne out by the facts.

JURISPRUDENCE: CUB 531 distinguished.

Followed in CUB 1521A re direct interest.

Appeal of the claimants' union dismissed.

August 14, 1957 (Affirmed)

CUB 1386

ADJUDICATION PROCEEDINGS (Board of referees: examination of witnesses, procedure, rehearing at insurance officer's requests, unanimous decision—credibility—finding of fact, Evidence: burden of proof on administration, oath, weight of evidence, Insurance Officer—general, Proof—affidavits, Jurisdiction of adjudicating authority re aspect not brought to appeal, Rehearing on Umpire's referral—new facts needed, Umpire—hearing).

LABOUR DISPUTE (Grade or class, Parties to dispute, Picketing, Sympathetic (not) strike, Union membership, Violence).

Section 63 of the Act (1955)

The claimants, members of the Canadian Brussels Carpet Weavers Benefit Association lost their employment as weavers with Harding Carpets Limited, Brantford, on August 23rd, 1956, subsequent to a picket line being set up at 7:30 a.m. around the plant to enforce the strike by 215 fellow workers who were members of the Canadian Textile Council whose bargaining agreement had expired. The 102 non-striking members of the Association had remained at work for part of the morning on August 23rd, they then had a meeting outside the plant with their union representative at 1:00 p.m. following which they did not return to work nor try to cross the line.

The claimants were disqualified under Section 63 of the Act. The board of referees unanimously reversed on the grounds the examination of the claimants and statements made by their representative showed convincing evidence that the threat of violence on the picket line was real, inasmuch as the claimants' union was not on friendly terms with the striking union and the claimants were not willing parties to the dispute.

The Director of the Unemployment Insurance appealed contending that the evidence did not support the finding of a real threat of violence. Following oral hearing, counsel for the claimants and their union submitted affidavits of five employees as to the possibility of violence had members of the Association crossed the picket line.

Upon appeal, it was held that whether or not refusal to cross the picket line amounted to voluntary withdrawal of labour is entirely a question of fact and that the evidence, according to the transcript, did not contradict the board's unanimous finding that "a very nasty and potentially dangerous situation" existed at the plant: the two incidents attested to by the employer's representative in connection with individuals trying to "buck straight through the line", in addition to the existence of jurisdictional dispute, justified the conclusion that an attempt to cross the line was very likely to provoke violence, disturb the peace and result in possible bodily harm.

The question raised by counsel for the Commission that the claimants had failed to prove they were in a different class of workers from the strikers (Section 63(2)(b)) was not taken on appeal and even if it had, it could not be aptly dealt with because of insufficient information. The Umpire pointed out that when the board of referees fails to consider an important aspect of a case the correct procedure is for the insurance officer to refer it back to the board which is in a better position than the Umpire to gather relevant facts.

JURISPRUDENCE: Distinguished in CUB 1532.

Appeal of the insurance officer dismissed.

August 19, 1959 (Affirmed)

CUB 1392

AVAILABILITY (Disqualification duration—indefinite, Intention, Presumption of non-availability, Proof, Restricted as to area, occupation and seasons).

CLAIMS MATTERS (Extension of qualifying period).

UNEMPLOYED (Availability for full-time work despite employment, Engaged on own account, Fishermen, Off-season unemployment, Proof, Separated from regular employment).

Section 54(1) and (2)(a) of the Act (1955)

and

Section 158(4) of the Regulations (1955)

A 36-year-old married claimant who resided in Halifax County, N.S., filed a claim for benefit on March 15, 1956, stating he had worked as a freight handler in Halifax from December 1955 to March 12, 1956 when he was laid off because of lack of work. He also applied for an extension of the qualifying periods which was approved for the periods April 20, 1954 to December 10, 1954 and from April 20 to December 10, 1955, on the grounds he had shown he was engaged in business on his own account for these two periods in the lobster industry. On July 23, 1956, he renewed his claim, stating he had been self-employed in the same industry from April 21 to July 22, 1956 and was available for work until August 10 when the lobster season would re-open. The renewal claim was allowed but upon subsequent investigation by the local office, the enforcement officer reported on October 16, 1956 that while it was not possible to definitely establish that the claimant was engaged in carrying on his own business from July 22 to August 10, 1956, general information in the area showed that during the closed season, lobsters were sold from pounds and to operate such a business, the same preparations had to be done prior to and during the normal period of operation from April to December.

The claimant was disqualified for the days April 20 and 21, 1956, because he was not available for work and for an indefinite period from April 22 on the grounds he was not unemployed. The board of referees unanimously maintained the disqualifications on the grounds the claimant was preparing his lobster gear on April 20 and 21, and had not proved he was unemployed as of April 22 because, on his own admission, he was fixing up his lobster pound and operating it.

Upon appeal, it was held there was nothing in the record to justify reversing the unanimous decision of the board, that the claimant was not available for work. It was also held that it could not be said the claimant had ceased to be employed on his own account between July 22 and August 4 merely because his business activities had slowed down and, moreover, that the claimant had not established that the nature of his self-employment was such that it would not have prevented him from accepting full-time employment in any particular week during that period as per Regulation 158(4).

JURISPRUDENCE: Followed in CUB 1566.

Appeal of the claimant dismissed.

September 6, 1957 (Reversed)

CUB 1401

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—reversed, Interpretation, Jurisdiction of adjudicating authority re policy).

AVAILABILITY (Efforts to find work, Prospects of employment, Student: not directed and presumed non-availability unrebutted, course's compatibility with—usual working hours—off-season, intention re work, Voluntarily left in the first place—disqualification only as not available).

Section 54(2)(a) of the Act (1955)

A 19-year-old single claimant who had worked as a buttermilk man at a local dairy from May 10 to October 24, 1956 when he was laid off for shortage of work, advised the local office on November 5th that he was pursuing courses at the provincial dairy school in nearby Sherbrooke to which he had not been directed pursuant to Section 57(3) of the Act.

The claimant was disqualified as not available under Section 54(2) (a) of the Act. The claimant appealed to the board of referees stating he would abandon his courses if he were offered employment in the dairy industry and that he had decided to take advantage of the industry's off-season to complete his training. The board of referees unanimously rescinded the disqualification. The Director of the Unemployment Insurance appealed to the Umpire alleging that the claimant could not make personal efforts to seek employment because his courses were from 9 to 5 each day, Sundays and Thursday afternoons excepted, and furthermore, the prospects of employment in the dairy industry during the winter were very poor. The claimant stated that the courses were divided into two six-months stages which need not be taken consecutively.

Upon appeal, it was held that the Unemployment Insurance Act did not intend to prevent a young man from completing his training but rather, and this was its essential object, sought to help the worker who for reasons beyond his control lost his employment and was seeking work without success; far from requiring a claimant to remain home doing nothing, the Act implicitly required that he actively seek work, a requirement which could not be met by the claimant in view both of the intent and extent of his studies. Furthermore, the claimant in the present case had voluntarily left employment as a grocery clerk at the end of October 1955 for the purpose of taking the courses in question and, accordingly, contrary to what he alleged, his enrolment in such studies was not because he was unemployed. Finally, there was a strong presumption that if he incurred considerable expenses in pursuing such studies, it was with the intention of completing them and accordingly that he was not available for the duration of his studies.

JURISPRUDENCE: Followed in CUB 1528.

Appeal of the insurance officer allowed.

September 24, 1957 (Affirmed)

CUB 1403

ADJUDICATION PROCEEDINGS (Interpretation).**UNEMPLOYED (Full working week: hours, part-time).***Sections 54(1) and 57(1) of the Act (1955)**and**Section 158(2) of the Regulations (1955)*

A 70-year-old widowed claimant had worked in a restaurant as a cook and counter helper from June 15, 1955 to August 7, 1956, when she had voluntarily left because of unsatisfactory conditions. On December 20, 1956 the local office reported that the claimant had obtained employment in another restaurant or club working from 10:00 a.m. to 3:00 p.m. for five days in one week and from 9:00 a.m. to 3:00 p.m. for six days in the next week working such weeks alternately.

The claimant was disqualified indefinitely as having failed to prove she was unemployed (Section 54(1) of the Act).

The board of referees removed the disqualification by majority decision on the grounds that the claimant's employment was part-time only; furthermore it was felt that under the circumstances the local office should set a time for the claimant's regular reporting to the local office that would be compatible with her working hours. The dissenting member found that the claimant's working hours constituted the full working week at her employer's premises.

Upon appeal, it was held that while Regulation 158(1) was not as clear as it could be, the dissenting member's interpretation would be contrary to its intention. It was held rather that the criterion to be used was not what constitutes full-time hours for a part-time job but what constitutes full-time hours for a full-time job.

JURISPRUDENCE: Followed in CUBs 1428 and 1437 and applied in CUBs 1442 and 1486.

Appeal of the insurance officer dismissed.

September 24, 1957 (Reversed)

CUB 1404

ADJUDICATION PROCEEDINGS (Board of Referees: procedure, unanimous decision—credibility—reversed, Evidence: burden of proof on claimant, statements before and after disqualification, weight of evidence).

UNEMPLOYED (Engaged on own account, Family enterprise, Full-time work, Usual remuneration, Voluntarily left previous).

*Section 54(1) of the Act (1955)**and**Section 158(a) of the Regulations (1955)*

A 29-year-old married claimant who had worked as an inspector in a manufacture of hosiery and sweaters from July 1955 to March 2nd, 1956 and then from March 12th to 29th, 1956 when she had voluntarily left because the wages were too low, had drawn benefit until exhaustion. Then

while on seasonal benefit she was discovered in the course of a routine spot check by the local enforcement officer ten months later to have been working in a restaurant opened by her husband two days after her last separation. The restaurant operated from 9:00 a.m. until approximately midnight and no other help was employed; the claimant made a statement that she had worked in the restaurant from the outset until June when her husband had told her she might as well get another job, but the claimant made a subsequent statement the same day to the effect that she only worked at the restaurant till the latter part of April.

The claimant was disqualified retroactively as she had failed to prove that she was unemployed. In her appeal the claimant stated that prior to leaving her job she had spent about 38 hours a week in the restaurant doing all the baking, taking cash and waiting on customers and that she had devoted about 55 hours a week after leaving her job. The board of referees unanimously removed the disqualification in view of the claimant's statement before the board that the only work she had done in the restaurant was to prepare the meals for the family, and furthermore, at no time had she been offered or refused employment. The Director of the Unemployment Insurance appealed on the grounds the claimant either worked the full week or was self-employed in the joint venture beyond the relief provided by Regulation 158(4).

Upon appeal, it was held that the claimant's statement before the board on which it had relied was of no value as unsupported by any evidence that she had made personal efforts to seek a job and, furthermore, was contradicted by her earlier statement for which the board had sought no explanation. Furthermore, the contention that the claimant's contribution to the business was of a personal nature closely related to her status as a wife carried little weight as the work she performed is normally remunerated. It was considered very significant that she had not yet obtained outside employment when she appeared before the board one year after leaving her industrial employment.

JURISPRUDENCE: Applied in CUB 1486.

Appeal of the insurance officer allowed.

September 30, 1957 (Affirmed)

CUB 1409

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—finding of facts, Evidence: employment history, employment officer's opinion, irrelevant to decision).

AVAILABILITY (Domestic circumstances, Efforts to find work, Intention of claimant, Prospects of employment, Restricted as to area suitable employment refused: joint disqualification).

SUITABLE EMPLOYMENT (Availability: joint disqualification, Change from usual area, Domestic circumstances, Duration of unemployment—brief, Employment market, Reasonable interval, Travel).

Sections 54(2)(a) and 59(1)(a) of the Act (1955)

A 23 year-old single claimant from the Iles-de-la-Madeleine, who had worked as a sailor during the navigation season, from 1952 to 1955, and had then come to Montreal on November, 1955, where he had found work as a labourer and assistant plumber, in the latter occupation from June

to September 8, 1956, when he was laid-off for shortage of work, had then returned home and filed a claim on September 21, 1956. On October 2nd, he was advised of an offer of employment in New Brunswick in his registered occupation of labourer to last approximately a year. He refused it stating he did not wish to work on the mainland because his mother was ill and he wished to stay with her. The local office reported that prospects of employment where he resided were practically nil.

The claimant was disqualified for six weeks under Section 59(1)(a) and indefinitely as not available under Section 54(2)(a) of the Act. The board of referees unanimously affirmed the two disqualifications.

Upon appeal, it was held that a claimant was not available unless he was prepared to immediately accept any suitable employment offered him and, furthermore, such claimant must be available for employment he has a reasonable chance of securing, and in this connection, be available in an area where he had reasonable prospects of finding employment. It was held that while family obligation have a bearing on the suitability of an offer of employment, the protection of the integrity of the home could not be absolutely in the sense it could be overridden by certain factors such as the absence of employment opportunities. It was noted in the present case that the claimant's mother had accompanied him previously to Montreal. As regards the offer of employment being prematurely made (two weeks), the lapse of reasonable interval is not important when there is a virtual lack of work in the area, as unanimously found by the board and demonstrated by the claimant's own employment history, a lack the claimant realized or should have realized. It further appeared that the claimant had not even bothered to register for employment while in Montreal where his chances of employment were at least fair. CUB 1102 cited by the claimant's counsel was an exception and to that extent could not serve as a precedent. Finally the suitability of the employment offered was considered, under the circumstances, to be an academic question which did not have to be dealt with by the Umpire.

JURISPRUDENCE: CUB 1102 distinguished.

Referred to in CUB 1413.

Appeal of the claimant dismissed.

October 15, 1957 (Affirmed)

CUB 1413

(French)

ADJUDICATION PROCEEDINGS (Interpretation).

SUITABLE EMPLOYMENT (Availability—disqualification only for refusal, Change from usual area, conditions, wage rate, Conditions: irregular employment, piece-work, seasonal, temporary, transportation facilities, travel distance, Disqualification duration, Domestic circumstances, Employment market, Prospects of other work, Reasonable interval).

Section 59(1)(a) of the Act (1955)

The claimants, bushworkers by trade and residing in Gaspesia, had been unemployed and on claim, some since December 1956 and the others since January 1957. Towards mid-March 1957 they refused an offer of supposedly continuous employment as bushworkers in the Lake Ste. Anne area on the North Shore, some 300 miles away, at the prevailing rate of

\$6.50 to \$7.50 a cord, the travel costs (\$56.00) being reimbursed one-way in the event of 52 working days or 54 cords and return fare in the event of 78 working days or 100 cords.

The claimants were disqualified under Section 59(1) (a) of the Act. The board of referees removed the disqualification against heads of families and reduced that for single men to three weeks' duration.

Upon appeal, it was considered that the fact woodcutting during the spring break-up was less lucrative and more arduous, is, as stated in CUB 1286, an occupational hazard which did not justify refusal. The same is true of going away; as stated in CUB 1409, family obligations affect the suitability of an offer of employment outside the district, but the protection of the integrity of the home is not absolute and is subject to certain factors such as the absence of prospects of local employment. As for transportation costs, the criterion of 10% of the expected wages is reasonable.

Restrictions on availability with respects to salary, working conditions, the occupation, are less justified the longer the period of unemployment. The difficulties of bushworkers are for the most part peculiar to all seasonal employment and the principles regarding availability are to be applied more strictly to the seasonal workers precisely because of the quasi-certainty of periodic unemployment.

Additional information secured by the Umpire disclosed that the placement order on which the offer was based was revoked on March 20 in favour of a new order for 400 workers to be hired between March 19 and April 15 and for 200 to be hired during April 15 and May 15, the employment in question terminating on May 31; in lieu of transportation costs, they were only to be paid a 25¢ bonus until these costs had been met. This order was cancelled on March 28. Furthermore, the employment was not continuous, as stated in the notice to the claimants, nor were the wages at a recognized rate, this being a clearing operation in which payment was made only for cutting wood of commercial value; there was little likelihood that the claimants would be able to make even half their transportation costs and there was even a possibility as of March 20 that some of the workers might not have been hired had they gone in.

It was held that the offer of employment was unsuitable: it was located some 300 miles away, was in connection with clearing operations and subject to exceptional conditions, was of short and, in some cases, uncertain duration, transportation costs were subject to increase in the event of bad weather and conditions for the employer paying such costs unlikely to be met and finally the drive-season was imminent with its employment opportunities for the local claimants.

JURISPRUDENCE: CUBs **1286** and **1409** referred to.

Distinguished in CUBs 1432, 1434, 1435, **1438**.

Appeal of the insurance officer dismissed.

November 1, 1957 (Reversed)

CUB 1419

ADJUDICATION PROCEEDINGS (Board of Referees: unanimous decision—reversed, Interpretation, Umpire: decision).

LABOUR DISPUTE (Conditions of employment, Directly interested, Financing, Grade or class, Participating, Sympathetic strike, Union existence and membership).

Section 63(2)(b) of the Act (1955)

In this test case, the claimant was a local chairman of a Lodge of the Brotherhood of Locomotive Engineers, who was employed as an engineer by the Canadian Pacific Railway until January 3rd when he became separated because of a stoppage of work due to a labour dispute at the company's premises between the company which had expressed the intention of eliminating firemen from diesel engines in yard and freight service and the Brotherhood of Locomotive Firemen and Enginemen who opposed this proposal. The strike was called at 4 p.m., January 2nd, following which the company ordered cessation of its operations resulting in some 70,000 employees becoming unemployed.

The two Brotherhoods had among their memberships, qualified locomotive engineers who worked sometimes as engineers and sometimes as firemen. According to their respective collective agreements they paid dues either to the firemen's union or to the engineers' according to the occupation in which their names appeared on the company's working list, on the first day of each month. The only exception was with respect to some 70 engineers who continued to hold office in the firemen's union after becoming engineers and for this reason were excused from paying dues to the engineers' union in favour of dues to the firemen's union.

The claimant, who at the time of the strike was assigned to the engineers' working list and paid dues to the engineers' union, was disqualified under Section 63 of the Act. The insurance officer held that all engineers were similarly subject to disqualification on the grounds that they belonged to a grade or class of workers that included members who were financing the dispute.

The board of referees unanimously removed the disqualification and the Director of Insurance appealed to the Umpire.

Upon appeal, it was held that the burden of proof, to show relief under Section 63, fell upon the claimant who must prove that he came within paragraph (b) of Section 63(2), in addition to paragraph (a). It was pointed out that direct interest is determined on an objective basis by a consideration of the individual's relationship to the issues in dispute and, accordingly, that the claimant who worked alternately as an engineer and a fireman had a direct interest in the proposal to eliminate firemen; that aspect of the case, however, did not seem to have been considered by the insurance officer who had resorted instead to the "grade or class" provision.

It was held that while there are (CUB 761) innumerable ways of grading or classifying workers, it was not only reasonable but safe to assume that generally the claimant had been working on the same kind of work, under the same conditions, methods and rates of remuneration, and at the same premises as the 70 engineers who admittedly financed the dispute and accordingly he was a member of a "grade or class" participating in the dispute. As regards the contention of the claimant's representative that "grade or class" connoted union affiliation, it was agreed that

such affiliation constituted some evidence of "grade or class" but that if it were the test, the result might be to provide unemployment insurance benefits to fellow-workers on the sole basis that they were not union members as opposed to those who were and for this reason received none. It was held that, having regard to the nature of the dispute and to the fact that the two Brotherhoods now included both engineers and firemen in their respective membership, union affiliation weighed against rather than for the claimant.

It was also held that the decision in the present case did not establish a rule that the payment of dues by one single member of the general class to a union financing the dispute brought the whole class within the disqualification. Furthermore, it was not in the province of the Umpire to look beyond the evidence in the particular case and venture on speculation as to what might occur in different situations.

JURISPRUDENCE: CUB 761 applied.

Distinguished in CUB 1630 re separate premises.

Appeal of the insurance officer allowed.

December 13, 1957 (Affirmed)

CUB 1438

(French)

ADJUDICATION PROCEEDINGS (Board of Referees: claimant present, examination of witnesses, unanimous decision—credibility—finding of fact, Evidence: medical certificates, statements after disqualification, Umpire—appellants).

SUITABLE EMPLOYMENT (Availability: disqualification only for refusal, Conditions of employment: piece-work, seasonal, temporary, transportation facilities, travel distance, Domestic circumstances, Prospects of other work, Suitability of offer: disability).

Section 59(1)(a) of the Act (1955)

A 38 year old married claimant had been laid off as a labourer in a local saw-mill from May 2nd to November 10th, 1956 by reason of shortage of work, had filed renewal claim two days later and still a month later had accepted work as a bushworker which he had left next day on grounds of inadequate pay, for which he had been disqualified for three weeks. At the end of February, he was made an offer of employment as a bushworker at Lake Ste-Anne, 88 miles away, paying \$6.50 to \$7.50 a cord against the prevailing rate of \$5.75, for likely earnings of \$10.50 per day; the travel advance was \$15.00 and the employer agreed to reimburse one way in the event of 52 days' work or 54 cords and both ways in the event of 78 days' or 100 cords.

The claimant refused the offer on the grounds of inadequate pay and of his impending return to work at the sawmill and was disqualified under Section 59(1)(a) of the Act for lack of good cause. The claimant represented he did not have moneys for travel and furthermore his two year old girl was dangerously ill since March 12th. On April 8th he appealed to the board of referees contending bushworking was not his usual occupation and past employment therein did not mean he was still capable for such work; he submitted a medical certificate dated April 24th to the effect he suffered from chronic rheumatism and was no longer capable of cutting pulp in

snow and water. He also tendered a letter from the saw-mill company attesting to his re-employment in the spring. The board of referees on May 16th unanimously affirmed the disqualification.

Upon appeal by the claimant's union, it was considered that there did not exist in the present case any of the factors which made the offer of employment at the same place unsuitable for the claimants in CUB 1413; their offer had been made in mid-March, not at the end of February, the travel distance was 300 miles, not only 88, the costs of transportation were high rather than negligible, the duration of employment was short and in some cases uncertain, compared with the three months the claimant could count on, the spring drive and likely employment therein was imminent whereas the claimant's chances of employment were practically nil. It was held that the claimant's state of health was the only reason of the many advanced that argued in his favour if it could be established bushwork was too arduous for him, but that the board which heard his testimony had unanimously concluded such was not the case at the time of the offer.

JURISPRUDENCE: CUB 1413 distinguished.

Cited in CUB 1500 as authority for accepting appeal from claimant's Union, the Fédération de l'Union Catholique des Cultivateurs.

Appeal of the claimant's Union dismissed.

December 13, 1959 (Varied)

CUB 1439

ADJUDICATION PROCEEDINGS (Board of referees: claimant present, examination of witnesses, unanimous decision—credibility—finding of fact, Disqualification—punitive).

CLAIMS MATTERS (Dependency, Punitive disqualification).

EARNINGS (Allowable, Business on own account, Net earnings, Proof, Reporting).

UNEMPLOYED (Availability for full-time work despite employment, Earnings, Engaged on own account, Family enterprise, Full working week—part-time, Proof, Retired from regular employment).

Section 54(1) and 65 of the Act (1955)

and

Section 158(4) of the Regulations (1955)

A 74-year-old married claimant who had claimed benefit since December 19, 1956 at the dependency rate, on the basis of his statement that he had been laid off from his employment by a firm of printers and publishers as a paper cutter from 1952 to December 13, 1956, because of a shortage of work and, a further statement, that he was not carrying on any occupation or business, reported on January 17, 1957, that his wife had been operating a grocery store for the past three years. As a result, his rate of benefit had been reduced to the single rate, effective December 16, 1956 creating an overpayment. The claimant then stated on February 7, 1957 that the business was owned jointly by his wife and himself, that its turn-over amounted to \$400.00 a week and that the store operated from 8:00 a.m. to 9:00 p.m. daily; further more, that he did not expect to return

to his former employment. The enforcement officer then reported that he had found the claimant waiting on customers; the claimant stated it had been his practice to do so, while his wife attended the housework, in addition to his regular job where his hours of work were from 7:30 a.m. to 4:30 p.m.

The claimant was disqualified for an indefinite period commencing December 16, 1956 on the grounds he had not proved he was unemployed and also under Section 65 in the amount of \$138.00 by reason of his false reporting. The board of referees unanimously maintained the disqualifications. The claimant's union contended in appeal that even if the claimant had received half the profits for 1955 and 1956, this would be less than the maximum allowable earnings. The director of unemployment insurance of the Commission observed to the Umpire that the Commission considered the claimant was entitled to relief under Regulation 158(4) and that his net earnings should be assessed at 50% in view of the joint ownership in the business.

Upon appeal, it was held, as per the Commission's observations, that the claimant was not working a full working week in view of the fact that the claimant and his wife had been operating the business for some three years while he worked in full-time employment; further more, it was held fair to assess the claimant's share of earnings at 50%. As regards the punitive disqualification, it was held to be entirely a question of fact and there was "no valid reason to differ from the unanimous finding of the board of referees which was arrived at after they had the opportunity of examining the claimant and judging his credibility".

JURISPRUDENCE: Distinguished in CUB 1566.

Appeal of the claimant's union allowed in part.

December 23, 1957 (Reversed)

CUB 1442

ADJUDICATION PROCEEDINGS (Interpretation).

UNEMPLOYED (Full working week: hours, part-time, Subsidiary).

Section 54(1) of the Act (1955)

and

Section 158(1) of the Regulations (1955)

A 66-year-old claimant who had been last employed from December 14th to 23rd, 1956, as a postal sorter in Toronto, informed the local office he had commenced working as a school crossing guard on February 11th, 1957 to relieve a sick person until his recovery. His hours were from 8:15 to 9:15 a.m., 12 noon to 12:30 p.m., 1:00 to 1:30 p.m. and 3:15 to 4:15 p.m.

He was disqualified indefinitely as not unemployed and appealed on the grounds he was paid only \$14.00 compared to the \$19.00 of seasonal benefit he would otherwise receive. On April 30th, 1957 the board of referees, after hearing the claimant, upheld the disqualification by majority decision.

Upon appeal, it was held that as pointed out in CUB 1403, the number of hours for a full week's work was the number for a full week's work

in the given occupation or at the particular factory, workshop or premises; in other words, the criterion is not what constitutes full-time hours for a part-time job but what constitutes full-time hours for a full-time job. The hours worked by the claimant did not constitute a full week's work in the occupation of guard, as commonly carried out in industry.

JURISPRUDENCE: CUB **1403** applied.

Followed in CUB **1476A**.

Appeal of the claimant allowed.

December 23, 1957 (Reversed)

CUB 1443

ADJUDICATION PROCEEDINGS (Board of Referees: procedure, rehearing at insurance officer's request, Interpretation, Jurisdiction of adjudicating authority: re aspect not brought to appeal and raised by adjudication, re procedure).

EARNINGS (Allocation, Bonuses, Holiday pay, Overtime credits, Usual remuneration).

UNEMPLOYED (Contract of service, Leave—compensatory, Usual remuneration).

Sections 56 & 57 of the Act (1955)

and

Sections 158(2), 172(1) & (2) & 173(1) of the Regulations (1955)

A flagman employed by the Department of Transport since 1953 on the Welland Canal, upon it being closed down for the winter on December 15th, 1956, went on leave with pay: fifteen days statutory leave and 41 days compensatory leave for overtime worked during the on-season.

His claim for benefit on January 2nd, 1957, was allowed but the insurance officer regarded the monies received while on leave as earnings (Sec. 56). The claimant appealed on grounds the monies were for overtime during the season and unemployment insurance contributions had not been credited during the leave. On February 21st, the board of referees, following a hearing at which the claimant, his lawyer and a union representative were present, unanimously found the monies to be a bonus (Reg. 172(2) (a)). The Director of Insurance appealed.

On finding out the claimant had returned to work the day after his leave expired, the Director of Insurance withdrew his appeal and asked the board to rehear the case on whether the claimant was unemployed while on overtime leave. The board, on June 13th, the following a hearing at which the employer's personnel manager was present, in addition to those at the first hearing, found in the affirmative in that the monies should be allocated to the on-season.

The Director of Insurance appealed under Regulation 158(2) and, in the alternative, Regs. 172(1) & 173(1). A hearing was held in Ottawa on September 19th, 1957, at which counsel represented the claimant. Information, at the Umpire's instance, was subsequently obtained indicating that the employer, this year for the first time, had provided work during the off-season, following expiry of the leave, for all its canalmen. The only question at issue was with respect to the period of compensatory, as opposed to statutory, leave.

Upon appeal, it was held that the principle involved was the same as in CUB 246 in which the claimant's employment during the year was found to fall into three stages, the second of which consisted of compensatory leave during which, although not working, he was kept on the payroll, was credited with annual, sick and special leave, was subject to superannuation contributions and his insurance book was retained by his employer. It was held there was no valid reason in the Act and Regulations to permit benefit while the canalmen were receiving their "usual remuneration", which means their full salary. The recruitment poster used by the Civil Service Commission and the Treasury Board authority under which overtime credits accumulated clearly showed the monies were not a bonus but a condition of the contract of service and furthermore, were earned or paid for a period falling between navigation seasons and therefore to be allocated to such period.

The Umpire considered it would be inappropriate to comment on the matter of contributions not being collected by the Unemployment Insurance Commission unless and until such matter had been submitted to the statutory authorities or challenged by the employees or the Department of Transport.

JURISPRUDENCE: CUB 246 applied.

Distinguished in CUBs 1445 and 1449, followed in CUBs 1458, 1561 and 1564 and applied in CUBs 1581, 1590, 1652, 1655, 1675.

Appeal of insurance officer allowed.

